TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 111.

THE CENTRAL OF GEORGIA RAILWAY COMPANY, PLAINTIFF IN ERROR,

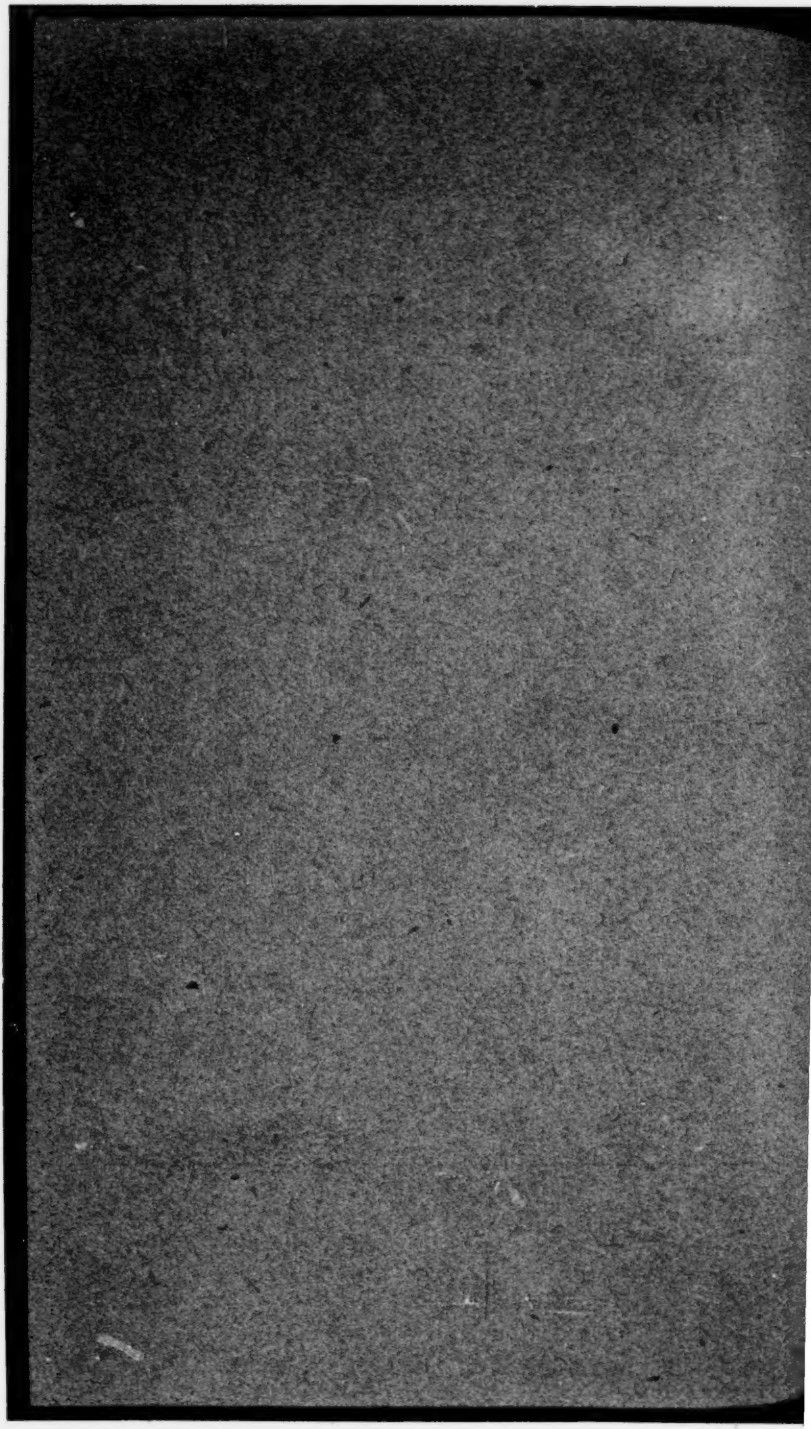
vs.

A. O. MURPHEY AND J. L. HUNT, PARTNERS, DOING BUSINESS AS A. O. MURPHEY & HUNT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

FILED AUGUST 20, 1904.

(19,059.)



(19,059.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 408.

THE CENTRAL OF GEORGIA RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

A. O. MURPHEY AND J. L. HUNT, PARTNERS, DOING BUSINESS AS A. O. MURPHEY & HUNT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

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1 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the supreme court of the State of Georgia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Central of Georgia Railway Company, plaintiff in error, and A. O. Murphey and J. L. Hunt, partners doing business as A. O. Murphey & Hunt, defendants in error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause

2 of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said plaintiff in error as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the ninth day of March, in the year of our Lord one thousand nine hundred and three.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by

EDWARD D. WHITE,
Associate Justice of the Supreme Court of the United States.

Filed in clerk's office supreme court of Georgia M'ch 12, 1903.

Z. D. HARRISON,
C. S. C., Ga.

3 UNITED STATES OF AMERICA, *ss:*

To A. O. Murphey and J. L. Hunt, partners doing business as A. O. Murphey & Hunt, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the supreme court of the State of Georgia wherein The Central of Georgia Railway Company is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward D. White, associate justice of the Supreme Court of the United States, this ninth day of March, in the year of our Lord one thousand nine hundred and three.

EDWARD D. WHITE,
Associate Justice of the Supreme Court of the United States.

GEORGIA, }
Pike County. }

On this 12th day of March, in the year of our Lord one thousand nine hundred and three, personally appeared Robert D. Feagin before me, the subscriber, a notary public in and for the county of Pike State of Georgia and makes oath that he delivered a true copy of the within citation to William W. Lambdin, counsel for A. O. Murphey and J. L. Hunt the parties defendant in the within citation, on March 12th, 1903.

ROBERT D. FEAGIN.

Sworn to and subscribed the 12th day of March, A. D. 1903.

[Seal of J. A. McCrary, Notary Public, Pike County, Ga.]

J. A. McCRARY,
N. P., Pike Co., Ga.

Filed in the clerk's office supreme court of Ga., M'ch 12, 1903.

Z. D. HARRISON,
C. S. C., Ga.

4 United States of America to the Honorable Edward D. White, one of the justices of the Supreme Court of the United States:

And now comes the Central of Georgia Railway Company, a corporation created by and existing under the laws of the State of Georgia, by its attorneys Hency C. Cunningham, Alexander R. Lawton and T. Mayhew Cunningham, Jr., and complains that in the records and proceedings, and also in the rendition of a judgment in a suit between A. O. Murphey & J. L. Hunt, co-partners doing business under name of A. O. Murphey & Hunt, plaintiffs, and the said Central of Georgia Railway Company, defendant, in the supreme court of the State of Georgia, said court being the highest court of said State in which a decision could be had in said suit, and in which final judgment was rendered against the said Central of Georgia Railway Company on the ninth day of January 1903, wherein was drawn in question the validity and legality of a statute of the State of Georgia contained in sections 2317 and 2318 of the Code of the State of Georgia adopted December 15th, 1895, said sections being as follows:

"SEC. 2317. When any freight that has been shipped, to be conveyed by two or more common carriers to its destination, where, under the contract of shipment or by law, the responsibility of each or either shall cease upon delivery to the next 'in good order,' has been lost, damaged or destroyed, it shall be the duty of the initial or any connecting carrier, upon application by the shipper, consignee or their assigns, within thirty days after application, to trace said freight and inform said applicant, in writing, when, where, how and by which carrier said freight was lost, damaged, or destroyed, and the names of the parties and their official position, if any, by whom the truth of the facts set out in said information can be established."

"SEC. 2318. If the carrier to which application is made shall fail to trace said freight and give said information, in writing, within the time prescribed, then said carrier shall be liable for the value of the freight lost, damaged or destroyed, in the same manner and to the same extent as if said loss, damage or destruction occurred on its line."

the validity of such statute being attacked because it violated paragraph three of section eight of article one of the Constitution of the United States which provides that Congress shall have power to regulate commerce with foreign nations and among the several States and the Indain tribes; and on the further ground that by the operation of said statute the property of the said de-

5 fendant, your petitioner, was taken without due process of law, contrary to the fourteenth amendment to the Constitution wherein it is provided that no State shall deprive any person of life, liberty or property without due process of law:

All of which questions involved the construction of clauses of the Constitution of the United States.

All of which appears in the records and proceedings in said suit; and in which the said Central of Georgia Railway Company, by its said attorneys, complains that manifest error hath happened, to the great damage of the said Central of Georgia Railway Company.

Wherefore the Central of Georgia Railway Company prays for the allowance of a writ of error, and such other process as may cause the same to be corrected by the Supreme Court of the United States.

HENRY C. CUNNINGHAM,
ALEXANDER R. LAWTON,
T. MAYHEW CUNNINGHAM, JR.,
Attorneys for Central of Georgia Railway Co.

Filed in office of clerk of supreme court of Ga., March 12, 1903.

Z. D. HARRISON,
C. S. C., Ga.

6 Supreme Court of the United States.

CENTRAL OF GEORGIA RAILWAY Company *vs.* A. O. MURPHEY and J. L. HUNT. } Error from the Supreme Court of Georgia.

Know all men by these presents: That the Central of Georgia Railway Company, principal, and the American Surety Company of New York, security, are held and firmly bound unto the said A. O. Murphey and J. L. Hunt, co-partners doing business under name of A. O. Murphey & Hunt, in the sum of one thousand dollars, to be paid to the said A. O. Murphey and J. L. Hunt, for which payment well and truly to be made we bind ourselves and each of us jointly and severally, and each of our successors and assigns, firmly by these presents.

Sealed with our hands and dated this twentieth day of February, 1903.

Whereas, the above-named Central of Georgia Railway Company has prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above entitled cause by the supreme court of Georgia:

Now, therefore, the condition of this obligation is such that if the above-named Central of Georgia Railway Company shall prosecute the said writ of error to effect, and answer all costs and damages

should it fail to make good its plea, then this obligation to be void, otherwise to remain in full force and virtue.

CENTRAL OF GEORGIA RAILWAY COMPANY,
[SEAL.] By JOHN M. EGAN, *President.*

Attest: T. F. SMITH,
Ass't Secretary.

Sealed and delivered in presence of
GEO. H. RICHTER,
Notary Public, Chatham County, Ga. [SEAL.]

7 AMERICAN SURETY COMPANY OF NEW YORK,
By JAMES SULLIVAN,
Resident Vice President.

Attest: G. A. MERCER, JR.,
Res. Ass. Secretary. [SEAL.]

Approved 9th day of March, 1903.
EDWARD D. WHITE,
Associate Justice of the Supreme Court of the United States.

Filed in clerk's office of supreme court of Ga. M'ch 12, 1903.
Z. D. HARRISON,
C. S. C., Ga.

8 In the Supreme Court of the United States.

CENTRAL OF GEORGIA RAILWAY COMPANY, Plaintiff in Error,
vs.
A. O. MURPHEY and J. L. HUNT (Co-partners under the Name of A. O. Murphey & Hunt), Defendants in Error.

Assignment of Errors.

And now comes the Central of Georgia Railway Company by Henry C. Cunningham, Alexander R. Lawton and T. Mayhew Cunningham, Jr., its attorneys, and says that in the record and proceedings in the above-entitled cause there is manifest error in this, to-wit:

First. In that the statute, adopted by the legislature of the State of Georgia, contained in sections 2317 and 2318 of the Code of the State of Georgia, adopted December 15th, 1895, which sections are as follows:

"SEC. 2317. When any freight that has been shipped, to be conveyed by two or more common carriers to its destination, where, under the contract of shipment or by law, the responsibility of each or either shall cease upon delivery to the next 'in good order,' has been lost, damaged or destroyed, it shall be the duty of the initial or any connecting carrier, upon application by the shipper, consignee or their assigns, within thirty days after application, to trace said freight and inform said applicant, in writing, when, where, how and by which carrier said freight was lost; damaged or destroyed, and the names of the parties and their official position, if any, by whom the truth of the facts set out in said information can be established."

"SEC. 2318. If the carrier to which application is made shall fail to trace said freight and give said information, in writing, within the time prescribed, then said carrier shall be liable for the value of the freight lost, damaged or destroyed, in the same manner and to the same extent as if said loss, damage or destruction occurred on its line."

is invalid when applied to this case (the case being one of a shipment from a point within the State to a point without the State) because such statute is a regulation of commerce among the several States of the United States, and is in violation of the exclusive power of Congress to regulate such commerce under paragraph III of section
9 & 10 VIII of *of* article I of the Constitution of the United States, which provides that Congress shall have power to regulate commerce with foreign nations and among the several States.

Second. That said statute is contrary to the fourteenth amendment of the Constitution of the United States, wherein it is provided that no State shall deprive any person of life, liberty or property without due process of law; the operation of said statute being to deprive the Central of Georgia Railway Company of its property without due process of law.

Wherefore the said Central of Georgia Railway Company prays that the judgment of the said supreme court of Georgia be reversed, and that said court be ordered to enter a judgment declaring said statute to be null and void on the grounds aforesaid.

HENRY C. CUNNINGHAM,
ALEXANDER R. LAWTON,
T. MAYHEW CUNNINGHAM,
Attorneys for Central of Ga. Railway Co.

Filed in clerk's office supreme court of Ga. M'ch 12, 1903.

Z. D. HARRISON,
C. S. C., Ga.

11 GEORGIA,)
Pike County.)

Be it remembered that at the April term, 1902, of Pike superior court, the Honorable E. J. Ragan, one of the judges of the superior court, then and there presiding, there came on to be tried on the 7th day of April in said year, the case of A. O. Murphy & Hunt against the Central of Georgia Railway Company, the same being an action for damages to a car load of grapes. Both parties announced ready, and the defendant company demurred to the petition of the plaintiffs upon the several grounds set out in the original and amended demurrer, which demurrer the court overruled; said demurrer is a part of the record in the case, and the Central of Georgia Railway Company alleges that the court committed error in overruling said demurrer.

The Central of Georgia Railway Company, defendant in said action, tendered to the court, during said term of said court, and had the same certified, a bill of exceptions, *pendente lite*, alleging error in overruling the demurrer of the Central of Georgia Railway Company, which bill of exceptions *pendente lite*, together with the original demurrer and amendments thereto, are a part of the record in said case.

The case went to trial before a jury and the jury, under the charge of the court, returned a verdict for the plaintiff against the Central of Georgia Railway Company for the sum of four hundred and thirty-four and 55/100 ($434.55) dollars, whereupon the Central of Georgia Railway Company, during said term of Pike superior court, filed its motion for new trial and subsequently amended the same, which original motion and amendments thereto are a part of the record in said case. By an order taken during said April term of Pike superior court, said motion for new trial was heard and determined in vacation, to wit: on the 23rd day of April 1902, which order, setting the motion for new trial to be heard on said day, is a part of the record in said case. The several grounds for new trial were approved by the court and form a part of the record in said case. A brief of the written and oral evidence in said case *were* approved by the court and form a part of the record in said case.

12 The said motion for new trial came on to be heard on the said 23rd day of April 1902, and the same was overruled by the court on each and every ground taken therein. The order and judgment of the court overruling said motion for new trial is a part of the record in said case.

And now comes the Central of Georgia Railway Company, within thirty days from the date of the trial of said case, the date on which its demurrer was overruled, and within thirty days from the adjournment of Pike superior court, and within thirty days from the judgment overruling its motion for new trial, and tenders this, its bill of exceptions, and alleges that the court committed error as follows:

1st. In overruling the demurrer and amended demurrer as hereinabove alleged, and which appears from the record in said case.

2nd. The Central of Georgia Railway Company alleges error in the judgment of the court as set out in the bill of exceptions *pendente lite* which was filed during said term of Pike superior court, and which is a part of the record in said case.

3rd. The Central of Georgia Railway Company alleges error in the court overruling its motion for a new trial on the grounds taken therein.

The plaintiff in error, The Central of Georgia Railway Company, specifies the following portions of the record as material to a clear understanding of the errors complained of, to-wit:

1st. The petition filed by the plaintiffs.

2nd. The demurrer and amendments to the demurrer.

3rd. The plea and answer of the Central of Georgia Railway Company.

4th. The order overruling the demurrer and amendments thereto.

5th. The bill of exceptions, *pendente lite*, which alleges error on the part of the court in overruling the demurrer as amended of the Central of Georgia Railway Company.

6th. The verdict of the jury.

7th. The judgment of the court thereon.

8th. The motion for new trial and amended motion for new trial with all the entries thereon.

9th. The order taken in term time setting the motion for new trial to be heard in vacation.

13 10th. Approved brief of evidence in said case.

11th. Judgment of the court overruling the motion for new trial.

Plaintiff in error presents this, its bill of exceptions, and asks that the same may be certified in terms of the law that the errors committed as herein set forth may be reviewed and corrected.

HALL & CLEVELAND &
R. L. BERNER,
Att'ys Plaintiff in Error.

I do certify that the foregoing bill of exceptions is true, and specifies all the evidence, and specifies all of the record material to a clear understanding of the errors complained of; and the clerk of the superior court of Pike county is hereby ordered to make out a complete copy of such parts of the record in said case as are in this bill of exceptions specified, and certify the same as such, and cause the same to be transmitted to the October term of the Supreme Court, that the errors alleged to have been committed may be considered and corrected. This May 5th, 1902.

E. J. REAGAN,
Judge Superior Court, Flint Circuit.

Due and legal service of the within bill of exceptions acknowledged, copy and all other and further notice and service waived.
May 5th 1902.

W. W. LAMBDIN,
Att'y for Def'ts in Error, Barnesville, Ga.

Filed in office May 7, 1902.
J. B. MATHEWS, *Clerk S. C.*

14 ZEBULON, GA., *May 14th*, 1902.

I hereby certify that the foregoing is the true original bill of exceptions, filed in this office, in the case therein stated; and that a copy thereof has been made and is now of file in this office.
Witness my signature and the seal of said court hereto affixed, the day and year last above written.

J. B. MATHEWS, *Clerk*.

15 Pike County Court, Dec. Term, 1897.

A. O. MURPHEY & HUNT
vs.
CENTRAL OF GEORGIA RAILWAY COMPANY. } Appeal to Superior Court.

Copy of Original Petition.

To the county court of said county:

The petition of A. O. Murphey & Hunt, a partnership composed of A. O. Murphey and J. L. Hunt, shows:—

1. That the Central of Georgia Railway Company is a corporation of said county and has a place of business in the town of Barnesville in said county, and that W. J. Vandivere is agent at said place of business of said corporation.

2. That the Central of Georgia Railway Company is indebted to petitioner in the sum of four hundred thirty four and 55/100 ($434.55) dollars, besides interest from August 5, 1897, by reason of the following facts:

3. That on July 31, 1897 petitioners shipped a car load of grapes from Barnesville, Ga. consigned to Rocco Bros. Omaha, Neb. by way of the Central of Georgia Railway Company, and that said grapes were delivered to said company at Barnesville, Ga. said car containing two thousand (2000) baskets of grapes.

4. That said freight was to be conveyed by more than two common carriers, the initial carrier being the said Central of Georgia Railway Company, and said freight was shipped under a contract of shipment in which it was provided that the responsibility of each carrier shall cease upon delivery to the next "in good order."

5. That said grapes were greatly damaged on the route between

Barnesville and Omaha, so much damaged that their value for market was almost entirely destroyed. The damage resulted from the fact that said grapes were allowed to become saturated with water so that the grapes became moulded, and on examination were found to be loose from the stems and decayed on account of having become saturated with water on the route as aforesaid. The baskets were also badly soiled and discolored by cinders and other things.

6. That the water which so saturated the said grapes, it is
16 supposed, flowed into the car from the ice boxes which had by the negligence of the carriers become filled and choked up with cinders and other debris, thereby causing an overflow of water from the ice boxes attached to said car.

7. That all of this damage was the result of the negligence of the common carriers on the route between Barnesville and Omaha.

8. That when the grapes were shipped from Barnesville they were in first class — and were of the finest quality, and had they been shipped in a careful manner and delivered to consignees at Omaha they would have brought the highest market price for grapes. That the market price for said grapes on Aug. 5th, the date of their arrival in Omaha, was thirty-five (35c.) cents per basket, and that said car would have been worth seven hundred (700) dollars.

9. But the said grapes, on account of their damaged condition, only sold for two hundred sixty-five and 45/100 ($265.45) dollars, and that price was only obtained after a great deal of trouble, the grapes being in such poor condition, that the parties purchasing them would refuse to accept them after they were delivered.

10. That the freight charges on said car load of grapes were two hundred twenty-one and 50/100 ($221.50) dollars. That after deducting said freight charges from the sum received for the grapes only forty-three and 95/100 ($43.95) dollars remained. Petitioner says that on account of the negligence of the common carriers on said route they were damaged to the amount of the difference between seven hundred dollars, the market price of the grapes had they been shipped in good order, and two hundred sixty-five and 45/100, the amount they actually received for the grapes, to wit, the sum of four hundred thirty-four and 55/100 dollars.

11. Petitioners further say that they applied to the said Central of Georgia Railway Company, the initial carrier on said route, and served them with an application in writing on August 20th, 1897, in which they requested that they, the said Central of Georgia Railway Company, trace said freight and inform applicants in writing when, how, and by which carrier said freight was damaged, and to furnish
17 petitioners the names of the parties and their official position, if any, by whom the truth of facts set forth in said information can be established, and that the said Central of Georgia Railway Company failed to trace said freight and give said information in writing within the thirty —, as they were required by law, wherefore they have become indebted to petitioners the amount of the damages to said grapes as above set forth. A copy of said ap-

plication which was served upon the said Central of Georgia Railway Company is hereto attached marked "Exhibit A."

12. Petitioners further say that in addition to the said sum of four hundred thirty-four and 55/100 ($434.55) dollars, the said Central of Georgia Railway Company is indebted to them for the interest on said sum from August 5th, 1897.

13. That said Central of Georgia Railway Company refuses to pay your petitioners the amount of principal and interest due as aforesaid.

14. Wherefore, petitioners pray that process may issue requiring the said Central of Georgia Railway Company to be and appear at the next quarterly term of the county court to be held in and for said county to answer your petitioners' complaint.

S. N. WOODWARD,
Petitioners' Attorney.

"EXHIBIT A."

GEORGIA,
Pike County.

To the Central of Georgia Railway Company:

The application of A. O. Murphey & Hunt, a partnership composed of A. O. Murphey & J. L. Hunt, shows:—

1. That on July 31st, 1897, they shipped a car load of grapes from Barnesville, Ga. consigned to Rocco Bros., Omaha, Neb. by way of the said Central of Georgia Railway Company.

2. That the car in which said grapes were shipped was L. & N. # 16739, said grapes consisted of two thousand (2000) baskets, and the net value of said grapes was over five hundred dollars.

3. That said freight was to be conveyed by more than two common carriers, the initial carrier being the said Central of
18 Georgia Railway Company, and under the contract of shipment the responsibility of each carrier shall cease upon delivery to the next "in good order."

4. That said grapes on the route between Barnesville, Ga. and Omaha, Neb. were greatly damaged, so much damaged that their value for market was almost entirely destroyed. The damage resulted from the fact that said grapes were allowed to become saturated with water so that the grapes were found to be loose from the stems and moulded. The baskets were also badly discolored by cinders and other things.

5. That this damage was the result of the negligence of the common carriers on the route between Barnesville & Omaha.

6. Wherefore applicants demand of the Central of Georgia Railway Company, the initial carrier, that it trace said freight and inform applicants in writing, when, how, and by which carrier said freight (the said grapes), was damaged, and the names of the parties and their official position, if any, by whom the truth of facts set

out in said information can be established. Said information to be furnished within thirty days from the date of this application.

This 20th day of August, 1897.

A. O. MURPHEY & HUNT.
S. N. WOODWARD, *Attorney.*

Served W. J. Vandivere agent for the Central of Georgia Railway Company personally with a copy of the within original.

This Dec. 3rd, 1897.

J. H. MILNER,
Sheriff, Pike County.

A. O. MURPHEY & HUNT
vs.
CENTRAL OF GEORGIA RAILWAY COMPANY. } Complaint.

State of Georgia, Pike county, to the sheriff of said county, Greeting:

The defendant Central of Georgia Railway Company is hereby required, personally or by attorney, to be and appear at the next county court to be held in and for said county on the 3d Mon-
19 day in Dec. next, then and there to answer the plaintiff's demand in an action of complaint.

Witness my hand and official signature as judge of said court, this 29th day of Nov., 1897.

E. F. DUPREE,
Judge C. C., P. C.

Demurrer.

And now comes the defendant and demurs to the petition in the above stated case, and for cause of demurrer says:

1st. The 4th paragraph of petition with the exhibit attached thereto shows that the bill of lading was not a contract for through carriage, and it is not alleged that the loss or damage occurred on defendant's road, nor is it alleged that the freight was not delivered to the next in good order by this defendant.

2nd. Because the act of the legislature, Code of 1895, sections 2317 & 2318, under which plaintiffs claim to hold defendant liable for the loss complained of is unconstitutional and void in this, that it requires this defendant to furnish evidence to the plaintiffs for the purpose of a personal and private claim, or lawsuit, touching the liability of another corporation to plaintiffs with which liability this defendant is in nowise connected in the contract or by law.

3rd. Because there is no cause of action set out in plaintiff's declaration and under the allegations contained in plaintiff's petition they are not entitled to recover anything of this defendant.

HALL & BOYNTON,
W. C. BEEKS,
Def't's Att'ys.

Amendment to Demurrer in Above-stated Case.

4th. Because the law under which plaintiffs claim to proceed in this action imposes upon the defendant the duty of hunting evidence with which plaintiff could make out a claim against another carrier, and — the event such evidence is not reported within a given time this defendant is made responsible for the act of another carrier with which it had no connection in carrying the goods either by contract or otherwise. Such legislative act is not a proper classification of legislation, but is arbitrary and is a violation of the constitution of this State.

5th. Because the said legislative act impairs the obligation of the contract between the plaintiffs and the defendant for carrying the goods, for the damage of which this suit is brought, by the terms of which contract this defendant is exempted from any and all liability for damages to goods beyond the end of its own line, and said act in this respect violates the Constitution of the United States.

6th. Because said law requires this defendant to procure and report to the plaintiffs certain information within a given time and on failure to do so, then without regard to whether such information could be obtained within the time prescribed, and without opportunity to defendant to be heard, the *the* act imposes upon the defendant the penalty of paying damages which are caused by another railway company—a railway company with whose carriage of the goods defendant had no connection by contract or otherwise, and such law denies the defendant due process of law and is void.

HALL & BOYNTON,
W. C. BEEKS,
Def't's Att'ys.

And now comes the defendant and by leave of the court amends its demurrer by adding the following grounds:

1st. Because the law on which the suit was brought is unconstitutional in this, that it is in violation of the interstate commerce clause of the Constitution of the United States, in that it affects in its operation the commerce between the several States over which subject matter the Congress of the United States alone has jurisdiction.

2nd. Because it is unconstitutional in this, that it subjects the property of the defendant without due process of law.

HALL & BOYNTON,
BERNER & BEEKS,
Def't's Att'ys.

And now comes the defendant at this the April term 1902 and amends its demurrer by adding the following grounds. The statute under which this suit is brought is contrary to law, the Constitution, and public policy, in that it seeks to obtain information

by statutory compulsion attaching to a failure to produce the evidence — a penalty—which information the various railroads are entitled to withhold if they so desire to do under the correlative liberty of silence guaranteed by the Constitution.

HALL & CLEVELAND,
R. L. BERNER,
Def't's Att'ys.

April Term, 1902.

The within amendments to the demurrer are hereby allowed.
E. J. REAGAN,
Judge S. C., F. C.

A. O. MURPHEY & HUNT
vs.
CENTRAL OF GEORGIA RY. CO.
} Complaint for Damages in County Court, Pike County, Dec. Term, 1897.

And now comes the defendant and reserving the right to demur and plead to plaintiffs' declaration makes answer thereto as follows:

1st. Defendant admits the allegations contained in paragraph 1.

2nd. Defendant admits that at the time mentioned in paragraph 3 there was a delivery of certain goods to them just how much or many this defendant is not prepared to say, but this defendant denies that said goods were delivered to them under any contract of through carriage or that they were received by def't for through carriage to the point designated in this paragraph.

(No number 4.)

5th. Defendant denies the allegations contained in paragraph 5 and demands proof of the same.

6th. Defendant denies the allegations contained in paragraph 6 and demands proof of the same.

7th. Defendant denies the allegations contained in paragraph 7 and demands proof of the same.

8th. Defendant denies the allegations contained in paragraph 8 and demands proof of the same.

9th. Defendant denies the allegations contained in para-
22 graph 9 and demands proof of the same.

10th. Defendant denies the allegations contained in paragrpah 10 and demands proof of the same.

11th. In answer to paragraph 11 this defendant says, that while it was not their duty to furnish plaintiffs the information demanded in the exhibit to this paragraph, but in order to serve one of their patrons, they exercised the utmost diligence in procuring the same, at the earliest moment possible, and did furnish to the plaintiffs, all the information they could obtain with the greatest dispatch possible and defendant denies that they are indebted to plaintiffs in any sum and demand proof of the allegations in this paragraph as to any indebtedness.

12th. Defendants deny the allegations contained in paragraph 12 and demand proof of the same.

13th. Defendant denies the allegations in this paragraph that they are indebted to plaintiff in any sum either for principal or interest.

And for further answer this defendant says, that while they deny that it was their duty to furnish plaintiffs with the information demanded but in order to serve the plaintiffs as one of defendant's patrons they sought to furnish plaintiffs with said information at the earliest moment possible and did furnish the same to plaintiffs on the *day after* the expiration of the time when plaintiffs' claim said information *said information* should have been furnished them. And for further plea this defendant says that they are not guilty of the wrongs and injuries complained of in plaintiffs' declaration and denies any and all liability or indebtedness to plaintiffs and of this they put themselves upon the country.

HALL & BOYNTON,
W. C. BEEKS,
Def't's Att'ys.

Demurrer Overruled.

April Term, 1902.

The within original demurrer and amendments thereto are hereby overruled.

April 7, 1902.

E. J. REAGAN,
Judge S. C., F. C.

23 *Bill of Exceptions Pendente Lite.*

In Pike Superior Court, April Term, 1902.

A. O. MURPHEY & HUNT
vs.
THE CENTRAL OF GEORGIA RAILWAY COMPANY. } Complaint.

A demurrer with amendments thereto filed to the original petition in the above stated case coming on to be heard at this the April term, 1902, the court overruled the demurrer both original and amended to which ruling of the court the defendant hereby excepts and assigns the same as error, and alleges that the court should have sustained the same on each and all the grounds therein and prays that these his exceptions be certified by the court and entered on the minutes.

This the 8th April, 1902.

HALL & CLEVELAND,
ROB'T L. BERNER,
Def't's Att'ys.

I hereby certify that the foregoing bill of exceptions is true. Let the same with this certificate be entered on the minutes. April 8, 1902.

E. J. REAGAN,
Judge S. C., F. C.

Verdict of the Jury.

We the jury find for the plaintiffs four hundred and thirty four dollars and fifty-five cents, $434.55.
April 7th, 1902.

R. A. BUCHANAN, *Foreman.*

Judgment of the Court.

Whereupon it is considered, ordered and adjudged by the court that the plaintiffs A. O. Murphey & Hunt recover of the defendant, The Central of Georgia Railway Company the sum of four hundred thirty four & 55/100 dollars ($434.55) & — costs of suit.
This April 7th, 1902.

E. J. REAGAN,
Judge S. C., F. C.

24 *Motion for New Trial.*

Filed in Office April 8, 1902. J. B. Mathews, Clerk.

In Pike S. C.

THE CENTRAL OF GEORGIA RAILWAY CO. vs. A. O. MURPHEY & HUNT. } Motion for New Trial. Verdict for the Plaintiffs.

And now comes the Central of Georgia Railway Company and moves to set aside the verdict in the above stated case on the following grounds:
1st. Because the verdict is contrary to law.
2nd. Because the verdict is contrary to the evidence strongly and decidedly against the weight of evidence and without evidence to support it.

HALL & CLEVELAND,
W. C. BEEKS &
R. L. BERNER,
Movant's Att'ys.

It appearing to the court that the movant is unable to complete this motion for new trial during the present term of the court for the reason that the stenographer is unable to translate his notes, it is or-

dered that the hearing of said motion be set for the 23rd day of April, 1902 at McDonough, Ga. and it is further ordered that the movant have until said time in which to perfect and complete by amendment and otherwise and have the grounds thereof approved by the court a brief of the evidence, the said motion, amended motion and brief to be thereafter filed as provided by the order of the court.

E. J. REAGAN,
Judge S. C., F. C.

Due and legal service acknowledged on the within motion for new trial of the same, rule *nisi* & copy rule *nisi* and all further service waived. Service on ordered also acknowledged and copy waived.

April 8, 1902.

W. W. LAMBDIN,
Att'y for Pl'ffs.

Amended Motion.

Filed in Office April 26, 1902. J. B. Mathews, Clerk S. C.

And now comes the movant and amends its motion for motion for new trial by adding the following grounds:

1st. Because the court erred in rejecting the evidence of A. O. Murphey as herein set: There was no allegation of ownership of the fruit in the petition except the statement in its second
25 paragraph that plaintiffs had been damaged in the amount set out therein by injury to a car load of grapes. The defendant denied the truth of this paragraph. On the trial of the case A. O. Murphey one of the plaintiffs voluntarily testified that the fruit did not belong to the plaintiffs but his wife, that the fruit was the property of his wife. On motion of plaintiff's attorney the court excluded this evidence over the objection of defendant who insisted that the testimony was admissible to disprove the fact that plaintiff had been damaged. The court erred for this reason in ruling out said evidence.

2. Because the court erred in refusing to give in charge the following written request of defendant's counsel: "If you believe from the evidence that the act of 1890–1 embodied in sections 2317 & 2318 of the Civil Code of 1895 restricted the railroad to a period of time within which to trace the grapes in this case and ascertain when, where, how and by which carrier said grapes were damaged, and the names of the persons by whom the facts as to the damage could be established, is unreasonable under the facts of this case, then I charge you the statute is inoperative as to this transaction and you should find for the defendant." To refuse to give this charge was error. 1. Because an unreasonable statute will not be enforced by the courts. 2. Because a statute for the compliance with which sufficient time is not prescribed by its terms and which for that reason is unreasonable and cannot be executed by the per-

sons to whom it is intended to apply, will not be upheld — enforced by the courts. 3. Because the law does not require a citizen or person to do an impossible thing. 4. Because it was apparent under the admitted facts of this case that it was impossible to trace this fruit, and therefore the charge was applicable.

3rd. Because the court erred in refusing to give in charge to the jury the following written request of defendant's counsel: "If you believe from the evidence that the defendant Co. made an honest effort in good faith to procure the information asked and that it was impossible for the company to obtain such information in the 30 days, then you should find for the defendant." It was error for the following ground: If the defendant really and in good faith
26 made an honest effort to procure this information in the 30 days and failed to do so it was a compliance with the law and is a good defense. For this reason it should have been charged and to refuse it was error.

4. Because the court erred in charging, without qualification the following: "Under these admissions (that plaintiff had made of the defendant to trace the grapes and that the defendant had failed to furnish the information in 30 days) if you believe that the plaintiff delivered the grapes to the defendant to be shipped to Omaha, Nebraska, and if you further believe that they were damaged en route by any of the connecting lines of carriers, the plaintiff would be entitled to recover in this case whatever damages he has sustained; and that would be true if the damages resulted from the negligence of either of the connecting carriers, provided it has been shown to your satisfaction that the grapes were damaged." This is error. 1st. Because the special contract signed by both parties fixes and limits the liability of the defendant company to any injury sustained on its own line. 2nd. It is not in the power of the legislature to compel a railroad to make a contract of shipment beyond its own line. 3rd. It is not in the power of a legislature to pass an act such as the one under which the present suit is brought requiring and compelling the defendant Co. to furnish the information contemplated by the act, and especially in the time specified therein, and for that reason said act is contrary to the Constitution and public policy. 4th. The act — which the present suit is brought is contrary to the Constitution and public policy in that it seeks to obtain information by statutory compulsion which information is of a character which the various railroad companies composing the through line have a right to conceal if they so desire under "the correlative liberty of silence" guaranteed by the Constitution. 5th. The evidence of the plaintiff failed to show that the defendant Co. was liable or that it injured the grapes of plaintiff. 6th. The act under which suit was brought is utterly void and of no effect because it is impossible to perform the same in the time fixed by the act towit—30 days.

27 5th. Because the court erred in rejecting the following evidence; being the correspondence between the defendant Co.'s claim agent, J. L. Graham, and the various lines over which the

grapes in controversy were shipped between Barnesville and Omaha, and the correspondence between the officers of said various lines, and the telegrams sent by defendant Co. hurrying said information in the 30 days, and the correspondence between said def't Co. through its agent at Barnesville, and plaintiff offering the information it had at hand; on the 20th day of Sept. plaintiffs' refusal to accept the same, and the correspondence between def't company's attorneys and the plaintiffs tendering the information, as soon as it was obtained. This various correspondence was tendered and accompanied by the correspondence of J. L. Graham, the claim agent of def't company, by whom def't offered and could have proven that this correspondence was the "tracings" required by the act under which this suit was brought, and also by the evidence of Van Divere, whom, def't offered and by whom def't could have proven that he tendered the information which def't had obtained up to the 20th day of Sept. after the application was made and it was rejected by the plaintiffs.

This evidence was offered to show that the def't Co. on the day after the application was presented to it, instituted a pursuit for the information sought, and wrote to the various lines composing the through line from Barnesville to Omaha over which the grapes were shipped, asking for the information, stating that it was to be provided in 30 days. Hurried it up by letters and telegrams and in every possible way endeavored to obtain it, and that it was not obtained until after the lapse of the 30 days; that it offered on the 20th day of Sept. to give plaintiff all the information it had been able to get up to that time, and plaintiff refused to receive it and for the final purpose of showing that it was impossible in the 30 days to obtain the information asked for. The court rejected the evidence on the sole ground that the act required the defendant company to furnish the information in 30 days after the application was presented to it, and that the company could not defend by showing that it had made every possible effort and had failed to obtain it, or that it had offered to furnish in the 30 days all the infor-
28 mation it had, or that it was impossible to obtain it and that, therefore, the evidence was inadmissible. This was error, because the defendant contends that the law does not require it to do more than it was possible for human effort to accomplish, and that this proof showed that it had in good faith made every possible effort to get the facts, and had failed because it was impossible to be done, and that this constituted a good and valid defense. And because this evidence not only showed that the defendant made an honest effort in good faith to get the information, but showed further that it was impossible to comply with the statute, and for that reason the statute could not be enforced, and that this constituted a good defense.

The evidence offered and rejected is attached to this ground.

Louisville & Nashville.

Letter from J. L. Graham, claim agent of Central of Ga. Ry. Co. dated Savannah, Ga. Aug. 21st, 1897, and addressed to the following parties marked "A."

Mr. G. R. Knox, G. F. A. N. C. and St. L. Ry. Nashville, Tenn.
Mr. C. B. Compton, G. F. A. L. & N. R. R. Louisville, Ky.
Mr. M. L. Becker, G. F. A. Wabash R. R. St. Litts.

DEAR SIR: I hand you herewith a formal demand from attorneys at Barnesville, Ga. for information as to movement of a car of grapes shipped by their client to Rocco Bros. Omaha, Neb. July 31st. 1897. Under the law of this State we are required to fully answer such demand within thirty days, which in this case will expire Sept. 20. To facilitate the tracing, I would thank you to show full record of movement of this car, 16739, over your line. Your car record office will show, doubtless, detail of movement, in addition to which I would like to have seal record and statement of icing performed, also copy of bill of lading. From the delivery carrier report is asked as to the condition of shipment at Omaha, and if damaged,
29 the cause of same as far as can be determined.

An early answer will oblige,
Yours truly,

J. L. GRAHAM,
Claim Agent.

A copy of this letter was sent to all of the parties to whom this letter is addressed by U. S. mail on date above mentioned, on August 21st, 1897.

Also a copy of the application made S. N. Woodward, attorney for A. O. Murphey and Hunt on Central of Ga. R. R. Co. to trace said freight, dated August 20th, 1897, was sent to the parties to whom the above letter was addressed on Aug. 21st, 1897. The application alleged that A. O. Murphey & Hunt shipped on July 31st, 1897, from Barnesville, Ga. to Rocco Bros. Omaha, Neb. a car load of grapes by way of def't Co. That the car was L. & N. #16739, that the grapes consisted of 2000 baskets, and alleged the net value to be over $500.00 that the freight was to be conveyed by more than two common carriers, the initial being def't Co. and under the contract of shipment the responsibility of each carrier was to cease upon delivery to the next carrier "in good order;" the application alleges damages to grapes between shipping point and destination; that the damage was the result of negligence of the common carriers between Barnesville and Omaha, and demands of Central of Ga. Ry. Co. the initial carrier, that it trace said freight and inform the applicants in writing when, how, and by which carrier said freight was damaged, and the names of the parties and their official position, if any, by whom the truth of facts set out in said information can be established, said information to be furnished within 30 days from the date of the application. Application dated Aug. 20th 1897.

On Nov. 18th 1897, C. B. Compton wrote the following letter to J. L. Graham, claim agent at Savannah, Ga. of def't Co. dated Louisville, Ky. Nov. 18th, 1897 and received at Savannah Ga. Nov. 22nd 1897.

Mr. J. L. Graham, F. C. A., Savannah, Ga.:

DEAR SIR: Please note additional correspondence. Hope this will be sufficient.

Yours truly, C. B. COMPTON, *G. F. A.*

30 C. B. Compton was the general freight agent of the L. & N. R. R. Co., and his letter to Mr. Graham was accompanied by the following information, received in Savannah Nov. 22nd 1897.

LOUISVILLE, KY., *Aug. 25th*, 1897.

L. & N. car No. 16739 movements.

Received from N. C. & St. L. R. R.	5.20 a. m.	Aug. 2nd
Left Nashville	5.57 a. m.	2
Arrive Earlington	1.55 p. m.	2
Left Earlington	2.30 p. m.	2
Arrive Evansville	7.50 p. m.	2
Left Evansville	9.10 p. m.	2
Ar. Ea. St. Louis	10.15 p. m.	3
Delivered to St. Louis Bdg. R. R.	11.25 a. m.	3

(Signed) E. L. HILL,
Car Accountant.

The general yard master of the L. & N. wrote the supt. of that road an inquiry was made as follows:

AUG. 28TH, 1897.

L. & N. R. R. Co., Mr. James Ceddes, supt.

DEAR SIR: L. & N. 16739 was received from N. & C. at 5.20 a. m. Aug. 2nd in apparent good condition. Forward in train #80 at 5.57 a. m. sealed 234 east and west billed from Atlanta, Ga. to Omaha, Neb. via H 322 & H 483 & Wabash. Lane conductor, L. & N. 16739 received at Atlanta. Received at St. Louis. Do not disturb vents.

(Signed) W. H. YATES.
B. Y. M.

Under date of Sept. 15th, 1897, Mr. Maddox, conductor of L. & N. wrote to Mr. Mann, ass't supt. that he handled car #16739 from Earlington, Ky., to Howell, Ind. Seals on east and west 234 and vents on sides were closed, and says while in his charge there was no damage to grapes and were delivered O. K. at Howell, Ind.

Mr. E. Guthrie, conductor, L. & N. wrote to ass't supt. Sept. 22, 1897, that L. & N. car #16739 grapes for Omaha, Neb., Aug. 2nd, did

not receive any rough handling while in his charge. Left at
31 East St. Louis in good order under 234 seals, ventilators not disturbed. Way bill dated Aug. 3d, 1897 showing that transfer of car from L. & N. to Wabash. Shows reicing at St. Louis.

Mr. E. Dunlap, supt. Terminal R. R. ass't under date Nov. 3d 1897, to Mr. W. S. McChesney, terminal supt. L. & N. at St. Louis *with* "that investigation shows car # 16739 was received from L. & N. at East St. Louis 11.30 a. m. Aug. 3d was received at St. Louis. At this time drains were reported O. K. and ventilators closed. Car was not opened. Made delivery to Wabash at 4.10 p. m. Showing movement was fair. All this information given by Mr. Compton, G. F. A. L. & N. of date Nov. 18th 1897, was not received by Mr. Graham, claim ag't of the defendant Co. until Nov. 22nd, 1897.

Nashville, Chattanooga & St. Louis Ry.

A letter, a copy of that sent to C. B. Compton, G. F. A. L. & N. R. R. marked "A," was sent to G. R. Knox, G. F. A. N. C. & St. L. Ry. and also a copy of the application made by A. O. Murphey & Hunt on Central to trace the freight and show where damage occurred etc.

The following is the information — Mr. J. L. Graham, claim agent of Central of Ga. R. R. by G. R. Knox, G. F. A. N. C. & St. L. Ry. on Sept. 6th, 1897, touching this controversy.

Mr. Knox's letter dated Nashville Tenn. Sept. 9th, 1897, to Mr. J. L. Graham, claim ag't of Central is as follows:

Mr. J. L. Graham, F. C. A., Savannah, Ga.

DEAR SIR: Movement of car grapes shipped July 31, 1897, to Omaha, Neb. L. & N. car # 16739.

Replying to yours of Aug. 21st, file # 4610 R. beg to enclose my entire file showing movement and handling of this car over our rails. You will note that car was received from C. of Ga. at 7.20 a. m. August 1st, and was delivered to L. & N. at Nashville at 5 a. m. Aug. 2d. Car was iced to full capacity before leaving Atlanta. End vents being open as per order of shipper. Car was not iced again on our road, it travelling under instructions to reice at St. Louis.

Yours truly, GEO. R. KNOX, *G. F. A.*

32 The letter of J. D. Mansy, comptroller of N. C. & St. L. Ry. to Mr. J. C. Wrenne, general supt. dated Nashville Tenn. Aug. 25th, 1897, shows movement of car L. & N. # 16739 as follows:

Train C. of Ga. at Atlanta	7.20 a. m. Aug. 1st.
Left Atlanta	9.20 a. m. Aug. 1st.
Arrived at Chattanooga	2.20 p. m. Aug. 1st.
Left Chattanooga	6.00 p. m. Aug. 1st.
Arrived at Nashville	4.35 a. m. Aug. 2nd.
To L. & N	5.00 a. m. Aug. 2nd.

Very truly, J. D. MANEY,
Comptroller.

C. S. Evans, ass't supt. W. & A. railroad on request of gen'l supt. of N. C. & St. Louis Ry. made the following reply addressed to J. H. Peeples, C. A. Chattanooga.

DEAR SIR: L. & N. # 16739 left here Sunday morning at 9.20 Chattanooga 2.20 p. m. Car was iced to full capacity before leaving Atlanta. Bunkers full. Advise Mr. Wrenne as to passing you, if iced, and time left Chattanooga, date, and if any delay, and cause. Seal # 234, both sides. End vents open, order shipper.

Dated Atlanta, Aug. 27th, 1897.

Yours truly, C. S. EVANS.

Mr. John H. Peeples wrote following to Mr. J. C. Wrenne, gen'l supt. Nashville L. & N. # 16739, dated Aug. 28th, 1897.

DEAR SIR: This car was received by extra Aug. 1st at 2.20 p. m. side door sealed C. 234—grated end windows and was forwarded by No. 14 which was first train north. Car was not iced at this station. Records show that it was not ordered iced, but that it be iced at St. Louis. Evans advises car iced to full capacity at Atlanta, therefore not necessary to be iced here.

Very truly, JNO. H. PEEPLES,
Yard Conductor N. C. & St. L.

33 Mr. E. J. McGover, on Sept. 1st, 1897, wrote to gen'l supt. of N. C. & St. Louis Ry. that his record of L. & N. car # 16739, grapes, showed that vents were open on arrival at Nashville. Car was not re-iced there.

GRIFFIN, GA., *Sept. 24th*, 1897.

S. N. Woodward, att'y for A. O. Murphey & Hunt, Barnesville, Ga.

DEAR SIR: In reply to your communication dated Aug. 20th, addressed to the Central of Ga. Ry. Co. that it trace the shipment of a car load of grapes made by said A. O. Murphey & Hunt on the thirty-first of July 1897, consigned to Rocco Bros. Omaha, Neb. by way of said Central of Ga. Ry. Co. in L. & N. car # 16739, and inform the shippers in writing, when, how, and by which carrier said grapes were damaged, and the names of the parties by whom the facts can be proven. etc. We have to inform you that immediately upon the receipt of your demand an earnest and diligent inquiry was commenced to ascertain the information you desired. A copy of your demand was sent to M. S. Becker, F. C. A. Wabash, R. R. St. Louis, Mo.—Mr. C. B. Compton, G. F. A. L. & N. R. R., Louisville, Ky., Mr. G. R. Knox G. F. A. N. C. & St. L. Ry. Nashville, Tenn. asking an immediate report from each as to movement of said car over his own line. This request was followed up by letters and telegrams urging a full report.

Mr. G. R. Knox, G. F. A. N. C. & St. L. Ry. reports that the car was received at Chattanooga at 7.20 a. m. August 1st, and was delivered to the L. & N. at Nashville at 5.00 a. m. August 2nd.

Mr. M. L. Becker, F. C. C. of Wabash R. R. reports that the car was received from the L. & N. Ry. Aug. 3, 1897, and forwarded at 8.10 p. m. Aug. 3d, and was delivered at the O. & St. L. Ry. Aug 4th. The car was received at St. Louis by L. & N.

The car arrived at Omaha, Aug. 5th, 1897, at 8.35 a. m. and was found that the drip pipe in east end of car was stopped up with cinders and water from the iee was on car floor at east end. The grapes on car floor more or less damaged. A. M. Colbert of
34 the U. P. system made inspection and reports as to condition of car on arrival at Omaha.

Second part of letter to S. N. Woodward.

We have not been able to obtain reports from the officers and agents of the Louisville and Nashville R. R.

We are inclined to think from report made by the Wabash that the responsibility rests with the L. & N.

We will cheerfully give you an opportunity, if desired, to examine the entire file in order that you may have the full benefit of all the information we can obtain after a diligent inquiry conducted in good faith and in the most expeditious manner possible.

Respectfully yours, HALL & BOYNTON.

The Wabash Railroad Company, freight claim department,

St. Louis, *Sept. 8th*, 1897.

Mr. J. L. Graham, F. C. A. Central of Ga. Ry., Savannah, Ga.

Dear Sir: In reply to your favor of the 21st ult. enclosing formal demand from attorneys at Barnesville, Ga., for information as to movement of car of grapes shipped by their client to Rocco Bros. Omaha, Neb. July 31st, 1897, etc., wish to say we have just completed a full investigation of this matter with the following result: Car # 16739 L. & N. loaded with grapes arrived at Omaha on the morning of Aug. 5th, 1897, at 8.35 a. m. and report of its condition is made by car inspector of the U. P. system to A. M. Collett, gen'l foreman, under date of Aug. 7th, as follows: "Two drain pipes filled up solid with cinders. Bottom drain cups closed. Top trap door and inside box covers had apparently been left open, allowing cinders to blow in and fill the drain pipes previous to icing the car. Car was flooded, as water was running out of side doors. Fruit in apparently good order. Would state it took my car repairer three hours to clean out the drain pipes, etc." In addition to the above agent of the B. P. Ry. at Omaha issued Bad Order report as follows:

35 "Drip pipe at east end of car stopped up with cinders. Water from ice on car floor at east end. The grapes on car floor more or less damaged." I also enclose report of our gen'l car. acc't, showing movement over our road St. Louis to Pattenburg and copy of our billing as requested by you. I would also state for your information that the car reached Omaha with wire and lead seals # 234

on sides and O. & St. L. #88 on ends, thus indicating that the seals were not removed from car while in transit over the Wabash railroad. The ice boxes in car were examined on receipt of car at our St. Louis station from the L. & N. and the same found to be full, which would indicate that the car was iced just previous to delivery to us. If I can be of any further service to you in this matter, please command me.

Yours truly, M. L. BECKER, *F. C. A.*

Exhibited to this letter is the copy of the way bill sent as a tracer on the Wabash railroad to ascertain the movement of the train, and the answer to this attached to said letter shows the movement of car as follows:

Movement of car 16739 L. & N. from St. Louis. to Pattonsburg.
Received from L. & N. Ry. Aug. 3d. 1897.
Left Luther 8.10 p. m. Aug. 3d. train No. 97.
Arrived Moberly 4.25 a. m. Aug. 4th, Conductor Crabb.
Left Moberly 7.50 a. m. Aug. 4th, train No. 97.
Arrived Pattonsburg 5.10 p. m. Aug. 4th Conductor Rutledge.
Delivered to O. & St. L. Ry. at Pattonsburg, Aug. 4th.

Relating to 4610—R. 9/3/97.

U. S. mail.

Mr. G. R. Knox, G. F. A., Nashville, Tenn.
Mr. C. B. Compton, G. F. A., Louisville, Ky.
Mr. M. L. Becker, P. C. A., St. Louis, Mo.

36 DEAR SIRS: Referring to mine under date of Aug. 21st, to by U. S. mail, covering the movement of car grapes shipped by A. O. Murphey & Hunt, to Rocco Bros. Omaha, Neb. I am as yet without reply, and I will thank you to give especial attention in order that the desired information may reach me in the time specified, namely, 20th inst.

Yours truly, J. L. GRAHAM,
Claim Agent.

KO.

NASHVILLE, TENN., *Sept. 4th*, 1897.

To J. L. Graham:

C 2 your letter twenty-first, file 4610 R, and subsequent wires reference to movement of L. & N. 16739. Will answer you fully Monday.

GEO. R. KNOX.

CENTRAL OF GEORGIA RAILWAY CO., 9/10/97—9.30 a. m.

C. B. Compton, Louisville:

When may I expect answer to my letter Aug. 21st, my 4610 R—relating car grapes destined to Omaha, car 16739.

J. L. GRAHAM, *Local.*

The defendants have introduced all the evidence and way bill, dated July 31st, 1897, from Barnesville Ga. to Atlanta, Ga. showing the shipment of the car load of grapes, A. O. Murphey & Hunt, of Barnesville being the consignors, Rocco Bros. of Omaha, Neb. being the consignees, and the way bill shows that the car was routed via W. & A., N. & C. St. L., and L. & N. and Wabash. The shipment was made released and value limited $500.00 and it was to be iced in Atlanta and St. Louis.

37 CENTRAL OF GA. R. R. Co., *Aug. 25th*, 1897—3.25 p. m.

G. R. Knox, Nashville:

To you Atlanta August 1st. grapes Omaha, Neb. L. & N. #16739. See important letter to you by U. S. mail Aug. 21st, my 4610 R—and hasten desired information. Ans. and quote your number covering.

J. L. GRAHAM, *Local.*

CENTRAL OF GEORGIA RAILWAY CO., 9/12/97—3.45 p. m.

G. R. Knox, Nashville, Tenn.:

Please see wire 25 H. covering my 4610 R—to you by latter Aug. 21st. Will you please let me have full reply covering car grapes destined to Omaha, Neb. as requested.

J. L. GRAHAM, *Local.*

Correspondence between Mr. Graham and Mr. W. J. Van Divere, agent of Barnesville, and S. N. Woodward offered in evidence for the two fold purpose shows diligence on the part of the defendant and the part of the evidence which would have been given by J. L. Graham and W. J. Van Divere if they had been permitted to testify.

BARNESVILLE, *Sept.* 21/97.

To J. L. Graham:

Yours wire to the acc't absence of Murphey & Hunt attorney. I am unable to get answer. Murphey & Hunt refuse to answer either way in his absence and claim time expired yesterday for their demand.

W. J. VANDIVERE.

SEPT. 21ST, 1897.

Messrs. Hall & Boynton, division counsel, Griffin, Ga.

DEAR SIRS: I beg to hand you my file of papers in this matter.

38 We have not yet received reply from Louisville and Nashville railroad and I am inclined to think from the report made by the Wabash that the responsibility rests upon the L. & N. We are one day over time, due to the fact that our Barnesville agent could not, on yesterday, find claimant's attorney.

Yours truly, J. L. GRAHAM,
Claim Agent.

CENTRAL OF GEORGIA RAILWAY COMPANY, 9/16/97.

C. B. Compton, Louisville.

See my circular letter to you, August 22nd covering shipment car grapes for Rocco Bros. Omaha, Neb. Mr. Knox & Mr. Becker have been heard from and still without reply from you. Please let me have information without further delay.

J. L. GRAHAM, *Local.*

CENTRAL OF GEORGIA RAILWAY COMPANY, *Sept. 20th*, '97.

Ag't, Barnesville, Ga.

Concerning demand of Murphey & Hunt, Aug. 20th as to damage grapes L. & N. #16739. Our connections have been slow in answering. If necessary for the company to make formal answer to application today, wire quickly, and will advise you what answer to make. Would prefer, however, that the matter be handled through division counsel. Confer with Murphey & Hunt's attorneys and advise.

J. L. GRAHAM.

LOUISVILLE, KY., 9/19/97.

To J. L. Graham:

Replying to your favor of Sept. 16th, I am not yet able to answer your circular letter, Aug. 22nd, covering shipment car grapes for Rocco Bros. Omaha. Am doing all — can to hurry along.

C. B. PHELPS.

39 6th. Because the court erred in rejecting the evidence of J. L. Graham who was offered as a witness by def't company, and by whom it could have proven, and sought to prove, that he was the claim agent of the def't; that he had charge of the tracing of the freight in controversy, that he instituted the search for the information asked for by the plaintiffs, that he proceeded rigorously by letters and telegrams and urged the various lines to provide it in the *the* 30 days required by the statute, and that it was utterly impossible to comply with the statute in the 30 days, but that it was tendered as soon as it was obtained.

The error consists in this: Def't contends that as it made every possible effort in good faith to obtain the information in the thirty days and failed after such effort to obtain it, and tendered it as soon as it was obtained, that this constitutes a good defense.

(1.) Because it showed the statute could not be properly complied with, and

(2.) That it had in good faith done all it could in the 30 days, and forwarded it as soon as it was obtained.

7. Because the court erred in rejecting the letter of C. P. Evans to J. H. Peeples, dated Aug. 27th 1897, and which is copied and attached to the 5th ground of this motion. It was error to reject this for it was offered to show that the damages to the grapes was

owing to the condition of certain pipes which were left open by order of the shippers.

The error was this: The def't company should not be made liable if the damage was caused by order of the shippers in any event. The court rejected this evidence on the ground that the letter was not legal evidence of the facts right to be proven.

8. Because the court erred in rejecting the interrogatories of J. C. Norvell, J. N. McDade, J. E. Maddox, and J. W. Varner hereto attached as part of this ground. This evidence was offered to show that the cars were properly handled by this def't company, and that they were delivered to the Western and Atlantic railway by the Central of Ga. R. R. Co. in good order.

It was error to reject this evidence because it showed that
40 the def't company handled the grapes carefully and safely and delivered them in good order to the next line, and that it had fully complied with its part of the contract, and should not be made liable for the damages in any view of the case.

Interrogatories of J. C. Norvell, J. W. McDade, J. E. Maddox, and J. W. Varnon, Offered by the Defendant.

To the (1) interrogatory. All know def't but not plaintiff.

To the (2) interrogatory J. W. McDade testified: Was employed by the Central of Ga. Ry. Co. as yard conductor July 31st, and Aug. 1st, 1897 in Atlanta. Have been since in same capacity by def't Co.

J. C. Norvell testified: On July 31st and August 1st, 1897, was employed by def't Co. in Atlanta as night seal clerk, and was up to Oct. 1st, 1899 in same capacity, but is now with Southern as trackage clerk.

To (3) McDade says: The car mentioned in July 3d, that is L. & N. # 16739, shipped from Barnesville, Ga. to Omaha, Neb. and routed via W. & A., N. C. & St. L., L. & N., Wabash, A. O. Murphey & Hunt, consignors, Rocco Bros. consignees, arrived in Atlanta Ga. at 6.25 a. m. Aug. 1st, 1897 by Central railroad. Don't know the number of seal. Car from outside inspection was in good condition and O. K. on arrival in Atlanta, and in same condition when delivered by him at 7.20 a. m. August 1st, 1897 to the W. & A. or N. C. & St. L. Ry., and received by last mentioned road as in good order when so delivered to it in Atlanta, Ga. without exception.

This was next carrier in due course of shipment to destination.

J. C. Norvell says: The car inquired about in interrogatory 3d that is, L. & N. car No. 16739. arrived in Atlanta Aug. 1st at 6.25 a. m. 1897 over Central of Ga. Ry. Co. The car was in good condition when received in Atlanta. It was delivered in same condition to N. C. & St. L. or rather the W. & A. at 7.20 a. m. Aug. 1st, 1897 in Atlanta, Ga. this being the next carrier. No execution being made to its reception but received as in good order.

Cross Answers to.

McDADE.

Know the facts testified to from my own knowledge after
41 refreshing my memory by examination of memorandum made by him at the time of handling the car. The memorandum was attached to the answers. He says after refreshing his memory from the memorandum he testifies from his memory thus refreshed and not from the memorandum. He attached the original memorandum made by him at the time.

J. C. NORVELL: In answer to cross interrogatories he says he gives his testimony from his own knowledge and recollections after refreshing his recollection by the memorandum, original memorandum, made by him at the time the car came to Atlanta. He says he testifies to the facts stated by him from recollection thus refreshed and not from the memorandum but independent of it. The memorandum is attached as the original made at the time.

McDADE says he only examined car outside and found it in good and proper running condition. It was L. & N. refrigerator car, don't know contents as did not examine inside.

J. C. NORVELL says:—Only examined outside of car and inspected the seal. It was an L. & N. refrigerator car. Seal was in proper condition and not tampered with. Made no inside inspection. Can't tell of own knowledge what was in the car.

McDADE & NORVELL both say:—Did not examine icing of car and don't know condition of icing, ice boxes, drip and drain pipes or ventilators, don't know what is proper condition for these ice boxes etc. to be in as that is out of our line of business. It is proper to keep these pipes clear of cinders and other refuse. The pipes are cleaned out by running a stick or rod up the drip pipes. If not cleaned out would overflow. They can be kept cleaned out. The refrigerator Co. makes provision for the cleaning out of the drain or drip pipes in this way. A man is provided by the ice Co. or refrigerator Co. to clean out the pipes when car is re-iced. The refrigerator Co. makes provision for cleaning out ice boxes and drain in fruit shipping, and this is done by the icer when
42 icing or reicing the car. It is not proper to allow the drain pipes from such cars to become filled with cinders or other refuse. If stopped, would overflow and wet the contents of the car.

Answers of J. E. Maddox and J. W. Varnon to Direct Interrogatories.

On July 31st and August 1st, 1897, were in employment of W. & A. R. R. then run by N. C. & St. L. R. R. Maddox was foreman of an engine and Varnon was conductor of freight train. Still in

same employment by same Co. They answer that the car named and described in 3d interrogatory, that L. & N. car #16739, was received by their Co from the Central of Ga. Ry. Co. at 7.20 a. m. at Atlanta August 1st, 1897 received by J. E. Maddox for the W. & A. R. R. run by N. C. & St. L. R. R. and J. W. Varnon left with said car at 9.20 a. m. same day for Chattanooga.

J. W. VARNON says he delivered the car to the Nashville division of the N. C. St. L. R. R. about 2.00 p. m. Aug. 1st, 1897 at Chattanooga. The car was in good condition when delivered to our company by the Central of Ga. R. R. Co. so far as I know, and if anything had been the matter with it we certainly would have discovered it. The seal was No. 234 both sides. We received it as in good order and delivered it in like good order to Nashville division of N. C. & St. L. at Chattanooga, and was so received by it.

They answer cross-interrogatories.

Know the facts testified to from their own knowledge and not from the records of the railroads. They examined the outside but not the inside of the car. It was an L. & N. car and received by us as loaded with grapes. Did not go inside. They did not examine the icing and don't know condition of ice boxes, drain pipes, or ventilators. Ice boxes and drain pipes should be clean and free from trash. It is proper to keep them free from cinders and other refuse. We don't know how this is done. If not done they would clog, and the water would not run out freely. They can be kept cleaned out. The company have men to attend to this. It is not proper to allow the pipes to become filled up as they would
43 become clogged and water would not drain out.

R. L. BERNER,
HALL & CLEVELAND,
Att'ys for Movant.

The original and amended grounds of motion for new trial *is* in this case approved. This April 23rd, 1902.

E. J. REAGAN,
Judge S. C., F. C.

Brief of the Evidence in Motion for New Trial.

Filed in Office April 26th, 1902. J. B. Mathews, Clerk S. C.

THE CENTRAL OF GEORGIA RAILWAY COMPANY
vs.
A. O. MURPHEY & HUNT.

A. O. MURPHEY sworn for A. O. Murphey & Hunt testified.

I was a member of the firm of A. O. Murphey & Hunt at the time this shipment was made. I handled 9/10 of the grapes that were

shipped. I had the car placed opposite my office on the side track and as the grapes came I went out and received them and superintended the putting of them in the car. The shipment was made either the 31st of July or the first of August 1897.

Witness certifies bill of lading and says shipment was made July 31, 1897. This is the shipment on account of which this suit was brought. I delivered these grapes to the Central of Georgia Railway Company at Barnesville Ga. July 31st, 1897. I considered the grapes in perfect condition so far as could be with perishable property when I delivered them, ¾ of them were Concords and ¼ Ines. The shipment was made to Rocco Bros. Omaha, Nebraska, I superintended the loading of 9/10 of them in the car. They were handled and washed carefully, as far as my experience went, they were picked properly. The car was a combination refrigerator car with ventilators on top. I have had experience in shipping grapes to the same destination, Omaha, Nebraska. From my experience in shipping grapes and the manner in which they were handled, if properly iced I would say they would keep six or seven days and it is my recollection, I am
44 not positive, it would require 4 or 5 days to carry them between Barnesville & Omaha. I made several shipments there. I think it was $12.40 I rec'd from this shipment. I had nothing whatever to do with icing the car or the boxes or tanks, I had never done such a thing. I had the car swept out and the grapes properly packed. The car was not iced at Barnesville. My recollection is that the car was to be iced at Atlanta, and perhaps at St. Louis. I am not certain as to any intermediate points, I said iced.

X examination:

I signed the bill of lading for Murphey & Hunt. I ordered the car from the Louisville & Nashville Railroad Company. It was a combination refrigerator car from the Louisville & Nashville Railroad Company. It was not iced at Barnesville, there was no way to ice it there. I directed it to be iced in Atlanta and St. Louis. I don't know whether it was or not. It is something like a thousand miles or over that, I think from Barnesville to Omaha, Nebraska. I examined the inside of the car when it came, so far as I know the car was all right.

Recalled:

There was 2000 baskets of grapes loaded in the car. I received the information furnished or tendered to me by Mr. Vandivere ag't of the defendant Co. at Barnesville about two days after the 30 days expired. He did not furnish me any information before the 30 days had expired. He never furnished my att'y to my knowledge with any such information. I made no arrangement with Mr. Sams about icing the car. I only gave instructions where I wanted it reiced. I gave instructions to Mrs. Vandivere agent at Barnesville. I had no connection with the icing.

PETER ROCCO, witness for plaintiff by interrogatories sworn said: I reside in Omaha, Nebraska, and was in Aug. 1897, as I am now a member of the firm of Rocco Bros. Said firm was engaged at that time in the wholesale fruit and commission business. I remember the shipment of a car load of grapes made by the plaintiffs A. O. Murphey & Hunt of Barnesville, Ga. to Rocco Bros. about the 1st of Aug. 1897. That was the only car the plaintiffs shipped to the firm during that season. The car arrived in Omaha on Sept. 5th,
45 1897. Our Mr. R. L. Young first went to inspect the car of grapes and when he examined the grapes and found them in bad condition he called me up by "phone" and wanted me to go and inspect the car, so I immediately went to the depot, examined the car of grapes in question and found them in bad condition. The grapes were mouldy and showed a great deal of rot, been wet by water running from the ice tanks, also covered with the cinders and the car was heated and had the smell of sour fruit. There was no delay in the removal or unloading of the grapes from the car on its arrival at Omaha. The grapes were sold promptly on arrival and inspection. As soon as we inspected the car and found it in the condition described, I ordered a small load to the store and thoroughly examined the grapes and found them in worse condition than at first anticipated. I went personally with some peddlers and disposed of the entire car. The market price for the goods in the condition they were in was the price we sold them for about 13 cents a basket or the total sum of $265.45. They were worth at that time in Omaha in good condition on the market the sum of 35 cents a basket. We had already sold ⅔ of the car at that price. The grapes actually sold for $265.45, the amount of freight paid was $221.50. The other expenses were commissions $26.55 and drayage $5.00. The sales netted the plaintiffs $12.40. Exhibit A is a receipted freight bill we paid on this car of grapes, the words written across the face of the freight bill were written by the agent of the railroad company. He examined the car before writing it and wrote it on there at our request as we would not pay the bill until he had done so, we asking it as a protection to the shipper. I have had no conversation recently with Mr. Eutrekin or any other railroad man in reference to said car of grapes.

Cross-examination:

Car arrived *Aug.* 5, 1897 and was delivered that day, sold immediately to peddlers who occupied 3 or 4 days in unloading it. We had nothing to do with the car after we sold it 5th or 6th Sept. except to check grapes out to peddlers, as they took them away. The car was sold entire 5th or 6th Sept. Grapes are perishable property and liable to deteriorate if allowed to remain too long in cars
46 in unremoved. Rocco Bros. did nothing to prevent further damage because they were sold as soon as car arrived, and were opened and inspected, which was the same day or early next day. They were not re-iced or removed by them. I do say that

those grapes which were next to and just above the two lower layers, if the lower layers were in a bad or damaged condition would not be damaged by reason of the damaged grapes next to them.

ROBERT L. YOUNG witness for plaintiff sworn by interrogatories testified: I reside in Omaha, Nebraska, and in Aug. 1897 was head book-keeper and general manager for Rocco Bros. of Omaha. The firm of Rocco Bros. for some time previous to 1897 and during that year and since that time were and have been and are engaged in the wholesale fruit and commission business. I remember a shipment of a car-load of grapes by the plaintiffs A. O. Murphey & Hunt of Barnesville Ga. to Rocco Bros. about the 1st of August 1897. That was the only car plaintiffs shipped to Rocco Bros. during that season. Said grapes arrived in Omaha Sept. 5th, 1897. When said grapes arrived they were in bad condition. The first two layers on the bottom of the car were water soaked and the car was badly heated and the grapes in the first two layers having fermented the heat of the car and the fermentation of the grapes in the lower tiers damaged the whole car and when the car was opened it smelt like a wine cellar or like sour fermenting fruit. I first examined the car and then Peter Rocco examined it afterwards. The cause of damage was owing to the condition of the car, the vents had been left open before the car was iced and the tanks became full of cinders and when the car was iced, shortly before getting to Omaha, the waste of the tanks had become clogged up with cinders and the water overflowed from the tanks into the car. The overflowed water reached the lower tier of grapes and caused the effects before mentioned. There was no delay so far as we were concerned in removing and unloading the grapes. When the car arrived we took out a couple of small loads immediately and when we discovered the condition the grapes were in and that the *the* parties to whom we had sold them would not accept them, we sold the same day of the arrival or the next morning the whole car to
47 peddlers. The peddlers took four or 5 days to dispose of them owing to their condition and they did not finish unloading the car until they sold the last of them. There was no delay so far as we were concerned, and the delay occasioned by the peddlers in unloading the car had no effect whatever upon the market price or the price we got for the grapes. The market price of the grapes in Omaha at the time of their arrival in the condition they were in was the price we got for them, about 13 cents a basket and there were 2000 baskets in the car. The market price of the grapes in Omaha if they had arrived in good condition would have been 35 cents a basket. We had sold about $\frac{2}{3}$ of the car at that price before they arrived. The car of grapes actually sold for the gross sum of $265.45. There was paid for freight the sum of $221.50, our charges were $26.55 for commission and $5.00 drayage making the total charge against the plaintiff $253.05, which left the net amount realized by the plaintiffs from the car $12.40. I have seen the paper attached marked "Ex. A;" it is the receipted freight bill for the

car of grapes in question; the words quoted in the 10th Int'y were written across the freight bill by the agent and representative of the Wabash road, Mr. G. M. Entrekin. The car came in over that road. These words were written on account, of the condition of the contents of the car, because we declined to pay the fr-ight until they made the notation. The man who made the notation had personally examined the stuff and we required this notation in order to protect the consignor. I recently had a conversation with the representative of the Wabash road. He wanted to know if I recalled the circumstance of the receipt of this car its condition, etc. and what we realized out of the stuff. I said we recalled the circumstances about the car but it was so late now I could not recall what we realized out of it. He asked me if we had records on file and I told him no, that we destroyed all old records every three years and am positive that this was in the last house cleaning but would look it up and if he called again would give him the information he could discover but he did not come back. Mr. Tracy, a U. P. yardman, asked me if I remembered the transaction in question. I said it was so long ago I had practically for-
48 gotten all about it but remembered the stuff was in bad order. He said he had forgotten also. I have looked it up since, a letter dated by us Sept. 11, 1897, giving an account of sales which letter was recently sent us by plaintiffs refreshed our recollection of the whole transaction.

Cross examination:

Car was delivered Aug. 5, 1897, 5th to 9th was consumed in unloading car by peddlers who had bought it, began on 5th. Car of grapes were not permitted to remain in same condition after they were received by Rocco Bros. till Aug. 11th, but car was immediately opened and inspected and some grapes taken out and whole car sold that day or early the next day. Grapes are perishable property and liable to deteriorate in value if allowed to remain in car without removal for any great length of time. They did nothing to protect the grapes, because they sold them, they were not reiced and only a small load or two was removed by Rocco Bros.

It was admitted by the defendant that plaintiffs under the tracing act had served written notice as required by the act, on the agent of defendant company at Barnesville, Ga. of date Aug. 20, 1897 and that the information requested was not furnished in 30 days.

Copy bill of lading is hereto attached offered in evidence by plaintiff.

The plaintiffs put in evidence receipt for this freight as testified to by Mr. Young with the words: "Grapes mouldy and loose from stems" written across same.

Freight, Vegetable, and Melon Bill of Lading.

Station, Barnesville, Ga.

Date, JULY 31, 1897.

Received by the Central of Georgia Railway Company. From A. O. Murphey & Hunt, in apparent good order (inward condition and value of contents unknown), the packages consigned, marked, and described as follows; which the said company agrees to carry to said destination, if on its road, or to deliver to another carrier on the route to said destination, subject in either instance to the
49 conditions named below, which are agreed to in consideration of the rate named.

Rate from Barnesville Ga. to Omaha, Neb. 94c. per 100 lbs.

Consignee, route, and destination.	Articles and marks.	Weight, subject to correction.
Consigned to Rocco Bros. Place Omaha State county Neb. Route C. W. & A. N. C. & St. L. L. & N. & Wabash Car — L. & N. No. 16739	1 car grapes 2000 baskets S. L. W. & C. Released Advanced charges $—	20,000

1. It is mutually agreed between the shipper and the transportation lines and each of them over which said property is carried: that the rate of freight shall not exceed that given above and charges advanced by said lines or either of them, except in case of change of route or destination. Notwithstanding any indorsement of this bill of lading over to any other person, the route, destination, or the consignee to whom shipped may be changed, and such change may be made by direction of the shipper, or it may be made by the carrier whenever, in its judgment, it shall appear that such change is necessary to prevent total or partial loss of the property from whatever cause occurring. Said lines shall not be responsible for any loss or damage resulting directly or indirectly from change of route or destination made under the provisions of this contract. If any such change in route or destination, shall be made, the shipper, owner, or consignee shall pay, in addition to the rate named above and charges advanced, all expenses incurred thereby, including freights for transportation over lines and parts of lines not included in the route for which said rate is named.

2. That the said several lines will not be held liable for injury to, or decay of fruit, vegetables, or melons, or any perishable freight caused by detention in consequence of an accumulation of freight

at any point or the breaking down of cars, locomotives or
50 vessels; from frost, heat, floods, fires, changes in the weather, nor from any other cause, unless such decay or injury shall be the direct result of the carriers' negligence; and the shipper, owner, and consignee hereby assume the — of proving such negligence.

3. That the property shipped hereunder may be carried under or on deck, at the option of the carrier. The carrier shall have the liberty to transfer the goods to, and transport them by lighters, barges, or any other car or vessel; to tow and assist vessels in any situation, and to sail without pilots.

4. That no carrier transporting said property, nor the property of such carrier shall be liable for loss or damage arising from jettison, guarantine, riots, strikes, accidents to boilers or machinery, any accident or perils of the seas or other waters, legal process, claims of ownership by third parties; want of proper cooperage, or insufficiency of packages in strength or otherwise, nor for the condition of packages or deficiency in contents thereof if receipted for by the consignee in good order; nor for wrong carriage or wrong delivery of goods imperfectly marked.

5. That the responsibility, either as common carrier or warehouseman, of each carrier over whose line the property shipped hereunder shall be transported, shall cease as soon as delivery is made to the next carrier or to the consignee; and the liability of the said lines contracted with is several and not joint; neither of the said carriers shall be responsible or liable for any act, omission or negligence of the other carriers over whose lines said property is, or is to be transported.

6. That unless written demand for loss or damage shall be made on the company liable therefor, or the company which actually, delivered the goods, within thirty days after delivery, no claim shall thereafter be made nor shall any suit or proceedings be instituted to recover same.

7. That if any carrier transporting this shipment shall deem it necessary to dispose of same en route, or after delivery has been tendered to and refused by consignee, in order to protect the interest of the owner and the charges of transportation, said carrier
51 is hereby empowered to act as the agent of the owner in the transaction, and will not be held responsible for more than net proceeds of sale after deducting all legitimate expenses.

8. It is further mutually agreed that every service performed under this bill of lading shall be subject to all the conditions printed and written in said bill of lading. These conditions are hereby agreed to by the shipper, and by him accepted for himself and assigns as just and reasonable.

9. In consideration of the reduced rates specified above, it is mutually agreed that the value of fruit shipments under this bill of lading shall be taken at not exceeding $500.00 per car load; vegetable shipments $200.00 per carload; melon shipments $85.00 per carload, and the carrier shall in no event be liable for any greater

sum in case of total loss or destruction; and in case of partial loss or destruction of a quantity less than carload, the liability shall be proportionate.

A. O. MURPHEY & HUNT, *Shipper.*

W. J. VANDIVERE, *Agent.*

The within is hereby approved as a true and correct brief of the evidence in the case therein stated and ordered filed as part of record.

This April 23. 1902.

E. J. REAGAN,
Judge S. C., F. C.

Upon considering the original and amended grounds of the motion for new trial in this case it is ordered that said motion be overruled and a new trial refused. Movants are allowed six (6) days in which to file the brief of evidence amended motion, charge etc. in clerk's office superior court Pike county, Ga.

This April 23rd, 1902.

E. J. REAGAN,
Judge S. C., F. C.

52 GEORGIA, }
Pike County. }

I, J. B. Mathers clerk of the superior court in and for said county do hereby certify that the within above and foregoing 4 pages contain a correct transcript of such parts of the record as in the bill of exceptions accompanying herewith are specified as material to a clear understanding of the errors complained of in the case of The Central of Georgia Railway Company plaintiff in error *vs.* A. O. Murphey & Hunt def'ts in error.

Given under my official signature and the seal of said court this May 15th, A. D. 1902.

J. B. MATHEWS,
Clerk Sup. Court, P. Co., Ga.

53 Supreme Court, Flint Circuit, from Pike County.

CENTRAL OF GEORGIA RAILWAY CO. }
vs. } No. 11.
A. O. MURPHEY & HUNT. }

And now comes the plaintiff in error and on the call of the above stated case suggests a diminution of the record in the above stated case as follows:

1st. In the first ground of the amended motion for new trial as copied by the clerk of the superior court of Pike county, the words "of defendant," are omitted after the word "objection." The defendant in the court below, plaintiff in error, here made the objection to

excluding the evidence, which is set out properly in the original first ground of the amended motion for new trial.

2nd. In the second ground of the amended motion for new trial, as copied by the clerk, the word "plaintiffs" is omitted between the words "that" and "how" in line next to last line in said ground of the motion, which word is in the original motion for new trial.

3rd. There is an error in the clerk's certificate to record in said case as follows: The clerk says "the foregoing four pages" when it should be forty-four pages.

The plaintiff in error moves the court to require the clerk of the superior court of Pike county to supply the omissions from the record and correct his certificate as hereinabove set out.

Nov. 18th, 1902.

LLOYD CLEVELAND,
R. L. BERNER,
JOHN I. HALL,
Att'ys for Pl'ff in Error.

GEORGIA, }
Fulton County. }

In person appeared before me Lloyd Cleveland, one of the counsel for plaintiff in error in the above stated case, who being duly sworn by me deposed as follows: Deponent knows that the statements contained in the foregoing suggestion of a diminution of
54 the record in the above stated case is true.

LLOYD CLEVELAND.

Sworn to and subscribed before me this Nov. 18th, 1902.

Z. D. HARRISON,
C. S. C., Ga.

Flint Circuit, Pike County.

CENTRAL OF GA. RAILWAY CO. }
vs. } No. 11.
A. O. MURPHEY & HUNT. }

It is consented by counsel for plaintiff in error and defendant in error that the foregoing suggestion of a diminution of the record is true, and that the omissions from the record set out in said suggestions are true, so that some may be used as part of the record to supply the omissions therein set out, and that the certificate of the clerk be amended as therein set out.

Nov. 18, 1902.

HALL & CLEVELAND,
R. L. BERNER,
Att'ys for Pl'ff in Error.
W. W. LAMBDIN,
Att'y for De'fts in Error.

55 Supreme Court of the State of Georgia.

ATLANTA, GA., *Jan'y 9th*, 1903.

The honorable supreme court met pursuant to adjournment. The following judgment was rendered:

CENTRAL OF GEORGIA RY. CO.
versus
A. O. MURPHEY & HUNT.

This case came before this court upon a writ of error from the superior court of Pike county; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed. All the justices concurring except Simmons C. J. disqualified and Lumpkin P. J. absent on account of sickness.

Bill of costs, $10.00.

Supreme Court of the State of Georgia.

CLERK'S OFFICE, ATLANTA, *Feb'y* 17, 1903.

I certify that the above is a true extract from the minutes of the supreme court of Georgia, and that Lloyd Cleveland paid the above bill of costs.

Witness my signature and the seal of said court affixed the day and year last above written.

[Seal Supreme Court of the State of Georgia, 1845.]

Z. D. HARRISON, *Clerk*.

56 CENTRAL OF GEORGIA RAILWAY COMPANY
v.
MURPHEY & HUNT. } No. 11. Flint.

1. Civil Code, §§ 2317–2318, provides: "When any freight that has been shipped, to be conveyed by two or more common carriers to its destination, where, under the contract of shipment or by law, the responsibility of each or either shall cease upon delivery to the next 'in good order,' has been lost, damaged, or destroyed, it shall be the duty of the initial or any connecting carrier, upon application by the shipper, consignee, or their assigns, within thirty days after application, to trace said freight and inform said applicant, in writing, when, where, how and by which carrier said freight was lost, damaged, or destroyed, and the names of the parties and their official position, if any, by whom the truth of the facts set out in said information can be established. "If the carrier to

which application is made shall fail to trace said freight and give said information in writing, within the time prescribed, then said carrier shall be liable for the value of the freight lost, damaged, or destroyed, in the same manner and to the same extent as if said loss, damage, or destruction occurred on its line." Held, that the provisions of these sections are not unreasonable and arbitrary, either as to the substantial requirements thereof, or as to the time within which the requirements must be met. Nor are they such a regulation of interstate commerce as to be beyond the power of the State. Nor do the sections infringe "the correlative liberty of silence." Nor do they amount to "compulsory private discovery" by "statutory terror." Nor are they unconstitutional and void for any other reason set forth in the present case.

2. An action under the provisions of the statute above quoted brought in the name of the shipper, is well brought though it appears that the shipper is not the owner of the goods.
3. Even if the fact that it was impossible to obtain the information required by the statute within the time specified therein
57 would relieve the carrier from liability, the evidence offered to show that it was impossible to so obtain the information did not have this effect. and was therefore properly rejected.
4. There was no error requiring the granting of a new trial.

COBB, *J.*:

A. O. Murphey & Hunt, a partnership, brought suit against the Central of Georgia Railway Company, alleging that they had shipped over the lines of the defendant company a car-load of grapes from Barnesville, Georgia, consigned to Rocco Brothers, Omaha, Nebraska; that the shipment was under a contract which provided that the responsibility of each carrier should cease upon delivery "in good order" to the next carrier. That when the grapes reached Omaha they were in a damaged condition; the amount of the damages that the plaintiffs sustained by the failure to deliver the grapes in good order at their destination being set forth in the petition; that on August 20, 1897, the plaintiffs made to the defendant an application in writing, in which they requested the company to trace the freight and inform plaintiffs in writing when, where, how, and by which carrier the freight was damaged and the names of the parties and their official position, if any, by whom the truth of the facts could be established; that the defendant failed to trace the freight and give the information within thirty days, as required by law; and that by reason of this conduct the defendant became indebted to the plaintiffs in the amount set out in the petition. The defendant demurred to the petition, upon the following grounds: (1) Because the petition sets forth no cause of action, and under the allegations thereof the plaintiffs are not entitled to recover. (2) The contract referred to in the petition not being one for a through carriage, the petition is defective in that it does not allege that the loss or damage occurred on the defendant's road, nor

is it alleged that the freight was not delivered to the next carrier in good order. (3) Because the act of the General Assembly, embraced in Civil Code, §§ 2317–2318, under which the plaintiffs' action is brought, is unconstitutional and void, in that it
58 requires the defendant to furnish evidence to the plaintiffs for the purpose of a personal, private claim or lawsuit touching the liability of another corporation, with which liability the defendant is in no wise connected either by contract or by law. (4) Because the law under which plaintiffs' action is brought imposes upon the defendant the duty of hunting evidence with which plaintiffs can make out a claim against another carrier, and, in the event such evidence is not reported within a given time, the defendant is made responsible for the act of another carrier with which it had no connection in carrying the goods, either by contract or otherwise. "Such legislative act is not a proper classification of legislation, but is arbitrary and is a violation of the constitution of this State." (5.) Because the act under which the suit is brought impairs the obligation of the contract between plaintiffs and defendant for carrying the goods; the defendant being, under the contract, exempted from liability for damages to goods beyond its own lines. (6) Because the law in question requires the defendant to procure and report to plaintiffs certain information within a given time, and on failure to so report, then, without regard to whether such information could be obtained within the time prescribed, and without opportunity to the defendant to be heard, the act imposes upon the defendant the penalty of paying damages which were caused by another railway company with which the defendant had no connection by contract or otherwise; such law denying to the defendant "due process of law." (7) Because the law in question is in violation of the interstate commerce clause of the Constitution of the United States. (8) Because such law deprives the defendant of its property without due process of law. (9) Because the act is contrary to law, the Constitution, and public policy, in that it seeks to obtain information by statutory compulsion, attaching a penalty to the failure to produce information which the various railroads are entitled to withhold, if they desire to do so, under the correlative liberty of silence guaranteed by the Constitution. The demurrer was overruled, and the case proceeded to trial and resulted
59 in a verdict in favor of the plaintiffs. A motion for a new trial filed by the defendant was also overruled. The defendants assigns error upon the judgment overruling the demurrer and the judgment refusing to grant a new trial.

1. This suit was brought under the provisions of the Civil Code, §§ 2317–2318, which are quoted in the first headnote. The petition set forth a cause of action if the law in question is valid. In passing upon the assignment of error complaining that the court erred in overruling the demurrer, it becomes necessary to determine only one question, and that is, whether this law is unconstitutional for any reason assigned in the demurrer. If it is a valid law, the other grounds of the demurrer not relating to the constitutionality

of the law were not well taken. We do not think the statute is subject to any of the exceptions taken in the demurrer. It is too well settled now to admit of question, that when private property is "affected with a public interest," the owner of such property "grants to the public an interest in such use, and must, to the extent of that interest, submit to be controlled by the public for the common good, as long as he maintains the use." Munn *v.* Illinois, 94 U. S. 113. It is also equally well settled, that the incorporation of a railroad company by a State and the granting of special privileges to carry out the object of incorporation, particularly the authority to exercise the State's right of eminent domain, and the obligation assumed by the acceptance of the charter to transport all persons and merchandise upon like conditions and for reasonable rates, affect the property and employment with a public use, and thus subject the business of the company to legislative control in the interest of the public. Georgia Railroad Company *v.* Smith 128 U. S. 174. It becomes necessary to determine in the present case whether the statute in question is of such a character as to come within the principles just referred to. A railroad company is not compelled to make a contract to forward goods beyond its own line. Coles *v.* Railroad Company, 86 Ga. 251. See also State *v.* Railroad
60 Company, 104 Ga. 437. But when it receives goods consigned to a point beyond the terminus of its own line, it undertakes to transport them to their destination, and if the goods are lost it will be liable therefor, in the absence of a contract otherwise limiting its liability. Falvey *v.* Railroad Company, 76 Ga. 597; Central Railroad Company *v.* Fruit Exchange, 91 Ga. 389. It may, however, make a contract for the transportation of goods beyond the terminus of its own line, and stipulate in such contract that its liability shall cease when the goods are delivered to the next carrier; thus making itself liable only for damages or loss occurring while the goods are in its possession. Central Railway Company *v.* Avant, 80 Ga. 195; Richmond & Danville Railroad Co. *v.* Shomo, 90 Ga. 500. In many instances it is to the interest, not only of the shipper but also of the carrier, that the contract entered into should provide for a through shipment of goods to their destination over the connecting lines of the initial carrier. In order to secure business where the goods are to be transported to a distant point, it is necessary that the carrier should have traffic arrangements with its connecting lines, by which the shipper may become entitled to a through bill of lading, securing transportation over all the lines between the initial point and the point of destination. Especially is this true in regard to goods of a perishable nature. A carrier which holds itself out to carry such goods would secure little custom from shippers of that class of goods unless it was in a position to give reasonable assurances that the goods would not be subjected, at the terminus of the initial carrier's line, to the delays incident to shipments upon a bill of lading the undertaking of which is accomplished when the goods reach the terminus of the first carrier.

The carrier may, under the law, refuse to issue bills of lading

to points beyond its own line, but a carrier that would adopt such a rule would do little business in the transportation of goods to distant points, especially at places where there were other competing carriers who would issue through bills of lading to points beyond their own lines. It thus being often to the interest of the
61 carrier to issue a through bill of lading in order that it may secure business, and the law allowing the carrier in such cases to limit its liability to loss or damage while on its own line, is it an unreasonable requirement, when under such circumstances a loss occurs beyond its own line, that the initial carrier shall, upon demand, furnish to the shipper, within a reasonable time, information as to the place at which the loss or damage occurred? If a through contract were for the sole interest of the shipper, such a requirement might be said to be unreasonable; but when such a contract is at least for the joint interest of both in all cases, and in many instances the making of such a contract would be the only means of securing the business for the carrier, it does not seem to be beyond the bounds of reason to require the carrier to furnish to the shipper information as to the point at which his goods were lost or damaged. It is much easier for the initial carrier to obtain this information than it would be for the shipper. Carriers, through business arrangements with the connecting carriers, are so intimately associated with each other, and each one is so thoroughly conversant with the systems of the others, that it is much easier for a carrier to obtain this information than a shipper. In fact, it is a practical impossibility in many instances for the shipper to obtain the information himself, and a refusal or failure on the part of the initial carrier, or one of the connecting carriers, to undertake to locate the point at which the loss or damage occurred, amounts practically to a denial of redress to the shipper of goods that have been lost or damaged. The well-known fact that as a general rule the shippers, under such contracts, were absolutely helpless where the goods were lost or damaged, was the motive which prompted the passage of the statute now under consideration. The statute is nothing more or less than a legislative declaration that where a railroad company in its own interest, to secure business, makes a contract to transport goods beyond its own terminus, and limits its liability to loss or damage upon its own line, in the interest of those who deal with the company, who come in contact with it as a public carrier, in the interest of shippers, that is, in
62 the interest of the public, the railroad company making such a contract shall, when the goods are lost or damaged in transit, be required to furnish to the shipper such information as that he may make a legal demand upon those who are responsible for the loss or damage. The right to control by legislative enactment in the interest of the public a corporation of this character is unquestioned, and in the legislative control of the character indicated in the law now under consideration we see nothing unreasonable or arbitrary. See, in this connection, Richmond Railroad Co. *v.* Tobacco Co. (Va.), 24 S. E., 261.

It is said, though, that even if the statute in question is a reasonable regulation in regard to requiring the carrier to furnish the information therein mentioned, that provision is unreasonable which fixes the time within which the information is to be furnished before the effect of the statute is to impose a penalty upon the initial carrier for the failure to give the information. Of course, if an act of the General Assembly imposes a penalty upon an individual or corporation for a failure to perform a given act within a given time, and it is manifest that the character of the act is such that the courts could take judicial notice that it could not be performed within the time required, then it would be the duty of the courts to declare such legislation invalid as an effort on the part of the lawmaking body to deprive a person of his property without due process of law. On the other hand, if the General Assembly has a right to declare that a person shall do a given thing, and it provides that this act shall be performed within a given time, and the court cannot judicially know that it is impossible to do the thing required within the time fixed for its performance, then it is not within the power of the court to declare that the legislation is invalid upon its face. If under the operation of such a statute in a given case it should conclusively appear that it was impossible for a person against whom proceedings were had under the statute to perform, within the time required by the statute, the act thereby imposed, the question as to whether there would be any liability under the statute would arise as a matter for decision. In
63 these days when it is a matter of such common knowledge, that the courts judicially know that railroad companies engaged in the transportation of persons and freight among the several States conduct their business with such facility by means of the telegraph and other agencies, that when it becomes necessary in their own interest to secure information in regard to the commonest details of the simplest transaction they can do so in a very short space of time, a court would stultify itself that would hold as a matter of law that thirty days was not a reasonable time for a carrier whose principal office was in Georgia to secure information as to where a car-load of grapes was lost or damaged which was transported from a point in this State to Omaha, Nebraska. If information on any point involving the same amount of investigation were needed for its own business, it could be ascertained in a much less time than thirty days, and it is not unreasonable to require that it should use the same degree of diligence where one of its shippers is interested.

The case of Wallace *v.* Railway Company, 94 Ga. 732, which lays down the doctrine of "correlative liberty of silence," and that "compulsory private discovery" can not be enforced by "statutory terror," has no application whatever to the present case. This is also true of the case of Ohio Ry. Co. *v.* Lackey, 78 Ill. 55, where it was held that an act requiring railroad companies to pay the costs of inquest and the costs of burial of all persons who died on their cars was invalid, so far as it attempted to make such companies liable where they had

violated no law and had been guilty of no negligence. The same is to be said of the case of Bielenberg *v.* Railway Company, Mon. 20 Pac. 314, where it was held that a statute of Montana which provided that a railroad company which damaged or killed a horse should be liable was invalid in so far as it imposed liability upon corporations that were not negligent in the act complained of. It certainly can not be said that the statute under consideration is an impairment of the obligation of the contract made by the plaintiffs with the defendant, inasmuch as the statute was enacted long before the contract was entered into. Nor is the law under review such a regulation of commerce among the several States as to be violative of that clause of the Constitution of the United States
64 which grants to Congress the exclusive right to regulate commerce among the several States. While a regulation of the character set forth in the statute under consideration might, in some remote degree, bear upon the matter of interstate commerce, it is in no sense such a regulation of that commerce as that the State would be inhibited from making it. In a broad sense, any regulation which touches at all persons or instrumentalities engaged in interstate commerce would be a regulation of that commerce; still many such statutes have been held not to encroach upon the right of Congress to control the matter of commerce among the several States. See, in this connection, Sherlock *v.* Alling, 93 U. S. 99; Smith *v.* Alabama, 124 U. S. 465; Chicago Railway Co. *v.* Solan, 169 U. S. 133; Richmond Railroad Company *v.* Tobacco Company, *id.* 311; St. Joseph Railroad Co. *v.* Palmer (Neb.) 22 L. R. A. 335; Hart *v.* Railway Co. 69 Iowa 485; Gulf Railroad Co. *v.* Crossland, (Tex.) 33 S. W. 290; Williams *v.* Fears, 110 Ga. 584, affirmed in 179 U. S. 270.

2. Having reached the conclusion that the demurrer was properly overruled, it becomes necessary to determine whether the court erred in refusing to grant a new trial. Complaint is made that the court erred in excluding the evidence of the plaintiff Murphey, to the effect that the fruit shipped belonged to his wife. There was no error in excluding this evidence. The plaintiffs were the shippers. They were the persons with whom the contract of affreightment was made. They were the consignors, and it is well settled that the shipper or consignor can bring an action against the carrier for a breach of the contract of affreightment, without reference to whether the shipper has any property, either general or special, in the goods shipped. See Carter *v.* Southern Railway Company, 111 Ga. 38. In Lockhart *v.* Railroad Company, 73 Ga. 472, the plaintiff was not only not the shipper, but had no interest whatever in the goods. The act under which this suit is brought gives the right of action in terms to the shipper, and provides that the carrier shall be liable for the value of the goods lost or damaged, in the same manner and to the same extent as if the loss or damage occurred on its
65 own line. As the shipper had the right, in the event of loss or damage on its own line, to bring an action against the carrier under the contract, under the statute the shipper had a right to bring an action against the initial carrier upon its failure to com-

ply with the terms of the statute. Of course, when the shipper recovers he will hold the recovery in trust for the true owner, and there can be no additional recovery by the owner under this statute.

3. It is contended further that the court erred in rejecting certain evidence consisting of correspondence between the claim agent of the defendant and officers and agents of the lines over which the grapes were transported from Barnesville, Georgia, to Omaha, Nebraska; the correspondence consisting of letters and telegrams; and also the evidence of the claim agent that he had charge of the tracing of the freight in controversy, that he instituted the search asked for by the plaintiffs, that he offered them the information which he had obtained just one day after the expiration of the thirty days required by the law, and that it was utterly impossible to have sooner obtained the information. While the evidence offered showed a mass of correspondence by wire and by mail, we can not say that the evidence would have authorized a finding that it was impossible for the defendant to have obtained the information within thirty days. The company seems to have obtained the information, or at least a portion of it, within thirty-one days, and it would indeed be a strain to say that it was a matter of impossibility to have obtained it earlier than this. In these days when so much can be accomplished in so short a time, and when those in charge of the affairs of the great railways of the country are in thorough communication with each other by the use of their own lines of telegraph as well as the lines of regular telegraph companies, it does seem to us to be an extraordinary claim to be made in behalf of such companies that it is an impossibility, with all of the means at their command, to locate the place at which a car-load of freight was lost or damaged in transit from Georgia to Nebraska, when such car can be transported between the two points within four or five days. If such impossibility exists, it is evidence only that those in charge of
66 the affairs of the company have either not sufficient employees to transact the business required of the companies, or the system by which they operate is defective at some point. We have reached the conclusion that the statute is a reasonable regulation, and the companies who are amenable to it must adopt some system by which the statute can be complied with. Especially so, when there can be no question that it is within the power of the company to adopt a system by which the information can be obtained within the time fixed by law. It may be said that the ruling we now make imposes a very great burden upon railroad companies. Railroad companies are not required to issue through bills of lading beyond their own lines, and if they do not desire to bear the burden incident to through bills of lading of this kind, the remedy is in their own hands. If a case could arise where it appeared that it was really impossible for the initial carrier to secure the information within the time fixed by the statute, another and quite a different question from the one now before us would be presented. The evidence offered in the present case did not make out a case of impossibility under any view of it. It simply demonstrated

that the system of the defendant was inadequate, and railroad companies, like every one else, must adapt their systems of business to the law of the land.

4. The foregoing discussion disposes of all of the grounds of the motion for a new trial that require special notice. The requests to charge were properly refused, and the portions of the charges complained of were not erroneous for any of the reasons set forth in the motion. Counsel stated in the argument that they did not raise any question as to the amount of the verdict, nor is there anything in their briefs in reference to this subject. We find no error which would have required the judge to grant a new trial.

Judgment affirmed.

All the justices concurring, except Lumpkin, P. J. absent and Simmons C. J. disqualified.

67 Clerk's office, supreme court of State of Georgia.

ATLANTA, GA., *February* 17, 1903.

I hereby certify that the foregoing pages hereto attached contain true and complete copies of the bill of exceptions & transcript of record, opinion and judgment of supreme court of Georgia in the case of The Central of Georgia Railway Company *v.* A. O. Murphey & Hunt, as appears from the files and records of this office.

Witness my signature and the seal of said supreme court hereto affixed the day and year above written.

[Seal Supreme Court of the State of Georgia, 1845.]

Z. D. HARRISON,
Clk S. C., Ga.

68 Clerk's office, supreme court of Georgia.

ATLANTA, GA., *March 17th*, 1903.

I hereby certify that the foregoing pages hereto attached contain the original writ of error from the Supreme Court of the United States to the supreme court of Georgia, the original citation and copies of the petition for writ of error and of bond of petitioner; also, copies of the original bill of exceptions, transcript of record and of the judgment and opinion of the supreme court of Georgia in the case of The Central of Georgia Railway Company, plaintiff in error and A. O. Murphey & Hunt, defendants in error, as appears from the records and files of this office.

Witness my signature and the seal of said supreme court of Georgia hereto affixed the day and year above written.

[Seal Supreme Court of the State of Georgia, 1845.]

Z. D. HARRISON,
Clerk Supreme Court of Georgia.

Endorsed on cover: File No. 19059. Georgia supreme court. Term No. 408. The Central of Georgia Railway Company, plaintiff in error, *vs.* A. O. Murphey and J. L. Hunt, partners doing business as A. O. Murphey & Hunt. Filed August 29th, 1903.

No. 111.

Office Supreme Court U. S.
FILED
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JAMES H. McKENNEY,
Clerk

In the Supreme Court of the United States.

OCTOBER TERM. 1904.

CENTRAL OF GEORGIA RAILWAY COMPANY,
PLAINTIFF IN ERROR,

versus

A. O. MURPHEY AND J. L. HUNT, PARTNERS, DOING BUSINESS AS A. O. MURPHEY & HUNT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

BRIEF FOR PLAINTIFF IN ERROR.

HENRY C. CUNNINGHAM,
JOHN I. HALL,
LLOYD CLEVELAND,
ROBERT L. BERNER,
For Plaintiff in Error.

THE FRANKLIN PRTG. AND PUB. CO., ATLANTA

In the Supreme Court of the United States

OCTOBER TERM, 1904.

CENTRAL OF GEORGIA RAILWAY COMPANY, Plaintiff in Error, *vs.* A. O. MURPHEY and J. L. HUNT, Partners, doing business as A. O. MURPHEY & HUNT.	No. 408.

In Error to the Supreme Court of the State of Georgia.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

On the 31st day of July, 1897, A. O. Murphey & Hunt delivered to the Central of Georgia Railway Company, at Barnesville, Ga., a car-load of grapes, to be shipped from that point to Omaha, Nebraska, and it was routed by the shippers as follows: Over the Central of Georgia, over the Western & Atlantic, over the Nashville, Chattanooga & St. Louis, over the Louisville & Nashville, and over the Wabash Railroad. There was issued to A. O. Murphey &

Hunt a bill of lading for the car-load of grapes, which showed the routing as above stated, and which bill of lading was signed by A. O. Murphey & Hunt (Record pp. 35 and 36), and became the contract of shipment between the Central of Georgia Railway Company and the said A. O. Murphey & Hunt. The obligation in the bill of lading on the part of the Central of Georgia Railway Company was "to carry (the grapes) to said destination, if on its road, or to deliver to another carrier on the route to said destination, subject in either instance to the conditions named below, which are agreed to in consideration of the rate named."

Omaha, Nebraska, is not on the road of the Central of Georgia Railway Company, and the contract was to, therefore, carry to the end of its line and there deliver to another carrier on the route to destination.

One of the conditions upon which the shipment was received and agreed to by both the shipper and the carrier is contained in paragraph 5 of the bill of lading, which is as follows (Record p. 36):

> "5. That the responsibility, either as common carrier or warehouseman, of each carrier over whose line the property shipped hereunder shall be transported, shall cease as soon as delivery is made to the next carrier or to the consignee; and the liability of the said lines contracted with is several and not joint; neither of the said carriers shall be responsible or liable for any act, omission or negligence of the other carriers over whose lines said property is, or is to be, transported."

The grapes moved under said bill of lading and reached Omaha, Nebraska, in a damaged condition.

The statute of the State of Georgia which provides a remedy for a shipper who sustains loss in a shipment of this kind is contained in the two following sections of the Code of Georgia of 1895, to wit:

> "§2317. *Carriers must trace freight.* When any freight that has been shipped, to be conveyed by two or more common carriers to its destination, where, under the contract of shipment or by law, the responsibility of each or either shall cease upon delivery to the next "in good order," has been lost, damaged or destroyed, it shall be the duty of the initial or any connecting carrier, upon application by the shipper, consignee or their assigns, within thirty days after application, to trace said freight and inform said applicant, in writing, when, where, how and by which carrier said freight was lost, damaged or destroyed, and the names of the parties and their official position, if any, by whom the truth of facts set out in said information can be established.
>
> "§2318. *Penalty for failing to trace.* If the carrier to which application is made shall fail to trace said freight and give said information, in writing, within the time prescribed, then said carrier shall be liable for the value of the freight lost, damaged or destroyed, in the same manner and to the same extent as if said loss, damage or destruction occurred on its line."

On August 20, 1897, A. O. Murphey & Hunt availed themselves of the provisions contained in section 2317 of the Civil Code of Georgia, *supra,* by addressing to the Central of Georgia Railway Company, a request to

"Trace said freight and inform applicants, in writing, when, how and by which carrier said freight (the said grapes) was damaged, and the names of the parties, and their official position, if any, by whom the truth of facts set out in said information can be established."

See Record p. 11, Exhibit "A," §6.

This demand of A. O. Murphy & Hunt to trace the shipment of grapes, and give the information which they sought, was served on the station agent of the Central of Georgia Railway Company at Barnesville, Ga., and he at once transmitted this notice to trace to J. L. Graham, Claim Agent of the Central of Georgia Railway Company at Savannah, Ga., reaching him on August 21, 1897, which was the next day after the said notice was served. J. L. Graham, as such claim agent, on the last named date, directed tracers to the General Freight Agent of the Louisville & Nashville Railroad Company, Louisville, Ky., the General Freight Agent of the Nashville, Chattanooga & St. Louis Ry. Co., Nashville, Tenn., which last named company is lessee of the Western & Atlantic Railroad, and the General Freight Agent of the Wabash Railroad, St. Louis, Mo., and attached to each tracer a copy of the demand of A. O. Murphey & Hunt upon the Central of Georgia Railway Company to trace said freight. (Record p. 20.)

The said J. L. Graham, Claim Agent, followed up the original tracing done on August 21, 1897, by numerous letters and telegrams urging the information sought, which will be found set out on pages 21, 22, 23, 24, 25 and 26 of the Record.

It was impossible for the Central of Georgia Railway Company to obtain within the thirty-day limit prescribed in the statute the information called for, to wit:

> "When, where, how and by which carrier said freight was damaged, and the names of the parties, and their official position, if any, by whom the truth of the facts set out in the information called for could be established."

The Central of Georgia Railway Company having failed to furnish the information called for by A. O. Murphey & Hunt, as aforesaid, within the time prescribed by the statute, the said A. O. Murphey & Hunt instituted their suit in the county court of Pike county, returnable to the December term, 1897, against the Central of Georgia Ry. Co. (Record pp. 9, 10, 11.)

The plaintiff set out in his petition:

> That said freight was to be conveyed by more than two common carriers, the initial carrier being the Central of Georgia Railway Company, and said freight was shipped under a contract of shipment in which it was provided that the responsibility of each carrier shall cease upon *delivery to the next in good order.* (4th paragraph of petition. Record page 9.)

The plaintiffs in said petition complained that the grapes reached Omaha in a damaged condition, and that the Central of Georgia Ry. Co. had become liable to them for the amount of the damage done to said car-load of grapes because said Central of Georgia Ry. Co., the initial carrier on the route designated in the bill of lading, did not on demand of the shipper:

> "Trace said freight, and inform applicants, in writing, when, how and by which carrier said freight was damaged, and furnish petitioners the names of the parties, and their official position, if any, by whom the truth of the facts set forth in said information could be established." (Record, top of p. 10, §11 of Petition.)

The defendant answered said petition as set out on pages 14 and 15 of the Record, and also filed several demurrers and amended demurrers to said petition. (See pages 12 and 13 of Record.)

One ground of demurrer was:

> Because the law under which the suit is brought is unconstitutional in this, that it is in violation of the interstate commerce clause of the Constitution of the United States in that it affects in its operation the commerce between the several States over which subject-matter the Congress of the United States alone has jurisdiction. (Record p. 13.)

The second ground of demurrer was as follows:

> Because said law requires this defendant to procure and report to the plaintiffs certain information within a given time, and on failure to do so, then without regard to whether such information could be obtained within the time prescribed, and without opportunity to the defendant to be heard, the act imposes upon the defendant the penalty of paying damages which were caused by another railway company, a railway company with whose carriage of the goods

defendant had no connection by contract or otherwise, and such law denies the defendant due process of law and is void. (Record p. 13, §6 of Demurrer.)

The case went to trial in the Superior Court of Pike county, on appeal from the county court of said county, at the April Term, 1902, of said Superior Court. The trial court overruled the demurrers of the defendant, and excluded from the consideration of the jury all the testimony offered by the defendant railway company for the purpose of showing that it had undertaken in good faith to trace the freight and locate "when, where, how and by which carrier said freight was damaged, and the names of the parties, and their official position, if any, by whom the facts could be established." And that it was impossible for the company to obtain the information required of it by the plaintiff in the court below. Which evidence is set out on pages 20, 21, 22, 23, 24, 25 and 26 of the Record.

The plaintiff obtained a judgment for the amount sued for, with interest, against the Central of Georgia Railway Co. The defendant in the trial court filed a motion for a new trial, see Record p. 16, and the amendments to said motion, Record pp. 17 to 30, both inclusive.

The fifth ground of the motion for new trial shows (Record p. 18) that the court rejected the evidence offered on the sole ground: "That the Act required the defendant company to furnish the information in thirty days after the application was presented to it, and that the company could not defend by showing that it had made every possible effort and had failed to obtain it, or had offered to furnish in thirty days all the information it had, or that it was impos-

sible to obtain it in that time." And for said reasons the trial court held said evidence inadmissible.

Plaintiff in error, who was defendant in the trial court below, offered to prove by J. L. Graham, Claim Agent, and by whom it could have proven that "he was the Claim Agent of the defendant, that he had charge of the tracing of the freight in controversy, that he instituted the search for the information asked for by the plaintiffs, that he proceeded rigorously by letters and telegrams and urged the various lines to provide it within the 30 days required by the statute, and that it was utterly impossible to comply with the statute within 30 days, but that it was tendered as soon as it was obtained." (Record p. 27, 6th Ground of Motion for New Trial.)

This evidence was rejected by the trial court for the reason set out in the 5th ground of the motion for a new trial, Record p. 19, above quoted.

The defendant in the court below offered to prove by witnesses who testified by interrogatories, that the car reached Atlanta, Ga., the end of the line of the Central of Georgia Railway Company, in good condition, and was promptly delivered to the next connecting line, that is, the Western & Atlantic Railroad, sometimes referred to as the Nashville, Chattanooga & St. Louis Railroad Company, which last company is the lessee of the Western & Atlantic Railroad. (Record pp. 28 and 29.)

The Central of Georgia Railway Company offered the depositions of J. W. Varnon, a conductor of the N. C. & St. L. R. R. Co. to show that the car-load of grapes was delivered at 2 P. M., on August 1, 1897, at Chattanooga, Tenn.; that the car-load of grapes was delivered to that company by the Central of Georgia Railway Company in good condition, and it was delivered in like good order and

condition to the Nashville Division of the N. C. & St. L. R. R. at Chattanooga, Tenn., and was so received by it. (Record p. 30.)

This evidence was offered for the purpose of showing, first, that the grapes were delivered by the Central of Georgia Railway Company at the end of its line in good condition; and second, for the purpose of showing that the grapes were in good condition when they reached Chattanooga, Tenn., and that the grapes were not damaged until the car containing them had passed beyond the limits of the State of Georgia. See 8th ground of Motion for New Trial, beginning on page 21 of Record and ending on page 30.

The trial court overruled the motion for new trial made by the Central of Georgia Railway Company, and the railway company duly excepted by bill of exceptions to the Supreme Court of the State of Georgia. (Record pp. 7 and 8.) After argument had in said Supreme Court the court rendered its judgment affirming the judgment of the trial court below, and delivered its opinion in said case which will be found set out at large from pages 39 to 47, both inclusive, of the Record and reported in 116 Ga., p. 863, and the case is now before this court on a writ of error to the Supreme Court of Georgia.

ASSIGNMENT OF ERRORS.

The Central of Georgia Railway Company assigned error in this court as follows (Record p. 5):

> "First. In that the statute, adopted by the Legislature of the State of Georgia, contained in sections 2317 and 2318 of the Code of the State of Georgia, adopted December 15th, 1895, which sections are as follows:
>
> (Quoted above, page 3 of Brief.)
>
> is invalid when applied to this case (the case being one of a shipment from a point within the State to a point without the State) because said statute is a regulation of commerce among the several States of the United States, and is in violation of the exclusive power of Congress to regulate such commerce under paragraph 3 of section VIII of article I of the Constitution of the United States, which provides that Congress shall have power to regulate commerce with foreign nations and among the several States.
>
> "Second. That said statute is contrary to the Fourteenth Amendment of the Constitution of the United States, wherein it is provided that no State shall deprive any person of life, liberty, or property without due process of law; the operation of said statute being to deprive the Central of Georgia Railway Company of its property without due process of law."

BRIEF AND ARGUMENT.

I.

Section 2317, of the Civil Code of Georgia of 1895, above quoted, applies only in cases of a shipment where under the contract of shipment, or by law, the responsibility of each carrier shall cease upon delivery to the next in good order, and applies only in a case where connecting carriers have exercised the right by contract to limit liability to their own lines. This section requires the initial carrier, in case of loss or damage to goods, whether the loss or damage occurred on the line of the carrier located within the State of Georgia, or beyond the State of Georgia, to give specific information as to when, where, how and by which carrier such freight was lost, damaged or destroyed, and the names of the parties and their official position, if any, by whom the truth of the facts set out in said information can be established.

In order for the carrier to comply with this statute it must procure and furnish within thirty days, from the time notice is served upon it, specific information touching each requirement therein set out. If the carrier could procure information as to when, where, how, and by which carrier the freight was lost or damaged, it would not comply with the act unless it also procured the names of the parties, and their official position, if any, by whom the truth of the facts set out in the report of the carrier could be established. In other words, a failure to comply, even though full compliance be impossible, with every one of the requirements set forth, would subject the carrier to the penalty prescribed in section 2318 above quoted. The penalty is imposed by the statute on the carrier who receives such notice and who

fails to comply with each and every specific requirement set out in said section 2317, *supra,* by making it responsible and liable to the shipper in the same manner and to the same extent as if the loss or damage had occurred on its line. The Supreme Court of Georgia, in this case, treated the requirement that the initial carrier shall assume the responsibility of loss regardless of where it may occur, as a penalty upon the carrier for failing to comply with the requirements set out in section 2317 of the Act, *supra.* Section 2317 limits its operation to cases where by contract or under the law the liability of the carrier ceases at the end of its own line. While the statute does not deny the right of the carrier to receive freight, and forward it over other connecting lines, and limit its liability by contract to its own line, yet the statute in question imposes the penalty of becoming responsible for the loss or damage regardless of where it may occur, unless the carrier will at its own expense comply with the provisions of section 2317 on the complaint of the shipper. Such legislation certainly imposes a burden upon the carrier and interferes with its full freedom to contract with the shipper with respect to confining its liability to its own line, and when applied to interstate shipments, as in this case, it is an interference with the right to contract for carrying interstate traffic, and is void.

> Any person, natural or artificial, may engage in interstate commerce. Vance *v.* Vandercook Co., 170 U. S. 438, 455.
>
> The right arises from the Constitution of the United States; it exists wholly independent of the will of either the lawmaking or the executive power

> of the State; it takes its origin outside of the State of South Carolina, and finds its support in the Constitution of the United States. Whether or not it may be exercised depends solely upon the will of the person making the shipment, and can not be in advance controlled or limited by the action of the State in any department of its government. (p. 455.)

WELTON *v.* STATE OF MISSOURI, 91 U. S. 282.

In passing upon the right asserted by the State to make enactments which affected interstate commerce, upon the ground that Congress had not acted in the matter, this Court used the following language in the above case:

> "The fact that Congress has not seen fit to prescribe any specific rules to govern interstate commerce does not affect the question. Its action on this subject, when considered with reference to its legislation with respect to foreign commerce, is equivalent to a declaration that interstate commerce shall be free and untrammelled. As the main object of that commerce is the sale and exchange of commodities, the policy thus established would be defeated by discriminating legislation like that of Missouri."

These decisions are applicable to the case in hand. The plaintiff in error, a corporation existing under the laws of the State of Georgia, is a person engaged in interstate commerce, not as a seller or purchaser, but as a carrier in connection with other carriers of interstate commerce.

Such legislation, we think, could not be upheld unless its application is confined to shipments from place to place within the State of Georgia. The statute in question, however, was applied by the Supreme Court of Georgia to an interstate shipment, and, as the statute can not affect carriers beyond the limits of the State, this construction imposes a burden upon the plaintiff in error which is not imposed, and can not by this legislation be imposed, upon lines outside of the State of Georgia engaged in the transportation of freight in question from Barnesville, Ga., to Omaha, Neb., under the contract of shipment, and it is therefore an unjust burden upon the initial carrier, and a discrimination against it.

HALL *v.* DECUIR, 95 U. S. 485.

In that case, this Court, speaking in reference to the right of the States to make enactments regulating interstate commerce, said:

> "The line which separates the power of the States from this exclusive power of Congress is not always distinctly marked, and oftentimes is not easy to determine on which side a particular case belongs. Judges not infrequently differ in their reasons for a decision in which they concur. Under such circumstances it would be a useless task to undertake to fix an arbitrary rule by which the line must in all cases be located. It is far better to leave a matter of such delicacy to be settled in each case upon a view of the particular rights involved."

The Court says further (p. 488):

> "But we think it may safely be said that State legislation which seeks to impose a direct burden upon interstate commerce, or to interfere directly with its freedom, does encroach upon the exclusive power of Congress."

WABASH, ETC., RAILROAD CO. *v.* ILLINOIS, 118 U. S. 558.

In that case this court reiterates the decision in Hall *v.* DeCuir, *supra*, and after referring to the cases in 94 U. S. 113, 155 and 164, said:

> "Notwithstanding what is there said, this court holds now, and has never consciously held otherwise, that a statute of a State intended to regulate or to tax or to impose any other restriction upon the transportation of persons, or their property, or telegraph messages, from one State to another, is not within that class of legislation which the States may enact in the absence of legislation by Congress; and that such statutes are void even as to that part of such transmission which may be within the State."

It was contended by counsel for the defendant in error in this case that the legislative enactment in question was the result of the proper exercise of the police power of the State. In passing upon the same contention, it was said

by this Court in Railroad Company *v.* Husen, 95 U. S. 465, 472:

> "While we unhesitatingly admit that a State may pass sanitary laws, and laws for the protection of life, liberty, health, or property within its borders; while it may prevent persons and animals suffering under contagious or infectious diseases, or convicts, etc., from entering the State; while for the purpose of self-protection it may establish quarantine, and reasonable inspection laws, it may not interfere with transportation into or through the State, beyond what is absolutely necessary for its self-protection. It may not, under the cover of exerting its police powers, substantially prohibit or *burden* either foreign or interstate commerce."

In Western Union Telegraph Co. *v.* Pendleton, 122 U. S. 347, this Court, in passing upon an act of the Legislature of Indiana which required telegraph companies to deliver dispatches by messenger to the person to whom they were addressed, or their agent, provided they resided within one mile of the telegraph station, or a city or town in which such station is, was held by this court to conflict with that clause of the Constitution of the United States which vests in Congress power to regulate commerce among the States, in so far as the statute attempts to regulate the delivery of such dispatches from places situated in other States. The Court said:

> "The police power of the State under the Constitution, although difficult to define, does not extend

> to the delivery at points without the State of telegraph messages received within the State."

And the Court added:

> "Whatever authority the State may possess over the transmission and delivery of messages by telegraph companies within their limits, it does not extend to the delivery of messages in other States."

The statute of the State of Georgia, Code of 1895, section 2276, provides that:

> "§2276. *Effect of notice to limit.* A common carrier can not limit his legal liability by any notice given, either by publication or by entry on receipts given or tickets sold. He may make an express contract, and will then be governed thereby."

This statute has frequently been construed by the Supreme Court of Georgia to authorize a carrier to make a contract for a shipment to a point beyond its own line and limit liability to its own line. See cases cited in this case in 116 Ga., *supra*.

Applying the decision in 122 U. S., *supra*, to this case, it is not within the power of the State to require a carrier to become responsible for loss of an interstate shipment which occurred on another line, and in another State, where the carrier had, as in this case, made a contract to carry to the end of its line and there deliver to the next connecting carrier, and limit its liability to its own line.

Further referring to this question, on page 358, 122 U. S., *supra*, this court said:

> "The object of vesting the power to regulate commerce in Congress was to secure, with reference to its subjects, uniform regulations, where such uniformity is practicable, against conflicting State legislation. Such conflicting legislation would inevitably follow with reference to telegraphic communications between citizens of different States, if each State was vested with power to control them beyond its own limits."

The same is true of the legislation now under consideration. The law of Georgia in question, as construed by the Supreme Court of Georgia in 116 Ga., *supra*, is made applicable to an interstate shipment, and the carrier is required to perform the duty of ascertaining at what point in other States the merchandise was damaged, and for failure to do so, inflicts upon the initial carrier the heavy penalty of becoming responsible for the lost or damaged freight, which in this case confessedly occurred beyond the limits of the State of Georgia.

The Supreme Court of Georgia in this case say:

> "It is equally well settled, that the incorporation of a railroad company by a State and the granting of special privileges to carry out the object of incorporation, particularly the authority to exercise the State's right of eminent domain, and the obligation assumed by the acceptance of the charter to transport all persons and merchandise upon like con-

> ditions and for reasonable rates, affect the property and employment with a public use, and thus subjects the business of the company to legislative control in the interest of the public."

We do not deny the soundness of this proposition as a general rule, but we do deny that the fact that a railroad corporation and its property and employment is affected with a public use which subjects the business of the company to legislative control in the interest of the public, confers upon the State Legislature the power to regulate, control, burden or interfere with contracts made by a railroad company in so far as it respects its interstate business.

FARGO *v.* MICHIGAN, 121 U. S. 230, 243, 244.

In reply to a similar contention in that case, this Court said:

> "The proposition that the States can by way of a tax upon business transacted within their limits, or upon the franchise of corporations which they have chartered, regulate such business or the affairs of such corporations has often been set up as a defense to the allegation that the taxation was such an interference with commerce as violated the constitutional provision now under consideration. But where the business so taxed is commerce itself, and is commerce among the States or with foreign nations, the constitutional provision can not thereby be evaded; nor can the States, by granting franchises to corporations engaged in the business of transportation of persons or merchandise among

them, which is itself interstate commerce, acquire the right to regulate that commerce, either by taxation or in any other way."

II.

The Supreme Court of Georgia, in support of its decision in this case, cited the case of Richmond Railroad Co. *v.* Tobacco Company, 24 Southeastern Rep., p. 261.

The question presented by the record in this case was not before the Supreme Court of Virginia in that case, for in that case it was conceded by the Supreme Court of Virginia that any attempt on the part of the State to prohibit the carrier as to interstate shipment from limiting its liability to its own line would be a regulation of interstate commerce, and therefore void.

The material part of the statute which the Supreme Court of Virginia had before it in that case, and on which the Supreme Court of that State rendered the decision referred to, is quoted in full on page 312 of the 169th United States Report. It will be seen by an examination of the provisions of that statute it provided for two things: First, when a common carrier accepts for transportation anything directed to a point or destination beyond the terminus of its own line or route, he should be deemed thereby to have assumed the obligation for its safe carriage to the destination, unless at the time of such acceptance such carrier be released from such liability by a contract in writing signed by the owner or his agent.

In that case the contract of carriage was not executed in conformity to the requirement of the statute, and the Supreme Court of Appeals of Virginia held that it was competent for the Legislature to prescribe the manner in which contracts should be made in reference to the trans-

portation of freight by railroad companies, whether intra or interstate.

It was further provided in the statute that "although there be such contract in writing, if such thing be lost or injured, such common carrier shall himself be liable therefor, unless in a reasonable time after demand made he shall give satisfactory proof to the consignor that the loss or injury did not occur while the thing was in his charge."

The Supreme Court of Appeals of Virginia held that this was a proper regulation by the State of Virginia.

That case on writ of error came to this court, and was decided in 169 U. S., p. ~~309~~ 311.

On the subject of whether the Legislature of the State of Virginia could prohibit a carrier as to an interstate shipment from limiting its liability to its own line, the court said:

> "The Supreme Court of Appeals of Virginia, in its able opinion, and the counsel of both parties at the bar, conceded that an attempt on the part of the State to prohibit a carrier as to an interstate shipment from limiting its liability to its own line would be a regulation of interstate commerce, and therefore void."

This court further said:

> "It is manifest that the statute of the State of Virginia in question does not attempt to substantially regulate or control contracts as to interstate shipments, but simply establishes a rule of evidence ordaining the character of proof by which a carrier may show that, although it received goods for transportation beyond its own line, nevertheless, by agreement, its liability was limited to its own line. That

this is the sole purpose of the statute seems too plain for anything but statement. It leaves the carrier free to make such limitation as to liability on an interstate shipment beyond its own line as it may deem proper, provided only the evidence of the contract is in writing and signed by the shipper."

The law of the State of Georgia authorizes a carrier to receive an interstate shipment and make a contract limiting its liability to its own line. The law does not require that the contract be in writing, but in this case the contract was in writing, and signed by the shipper and by the agent of the Central of Georgia Railway Company, as will be seen by reference to pages 35, 36 and 37 of the Record.

The Tracing Act, contained in section 2317 of the Code of Georgia, *supra*, recognizes the right to make such contracts, and their validity, but adds thereto a burden in case the property shipped is lost or damaged, which, if enforced, practically denies the right of the carrier to make a contract in respect of interstate shipments and limit its liability to its own line.

On the second clause of the statute of the State of Virginia, hereinbefore referred to, which simply required a carrier in case shipments were lost or injured, on demand of the consignor, to give satisfactory proof to him that the loss or injury did not occur while the thing was in its charge. This court said in regard to this provision of the statute that such a regulation was in the power of the State to adopt. The requirement of the Virginia statute that the carrier should give to the consignor satisfactory in-

formation that the loss did not occur on its line, could be easily complied with by calling upon its own employees, who could show delivery of the freight to the next connecting carrier in good order. Not so with the statute of Georgia. It recognizes the right to make such a contract. Indeed, the statute applies only where such a contract is made. Yet, it requires the carrier, not to give satisfactory proof that the damage did not occur on its line, but to ascertain when, where, how, and by which carrier beyond its line the freight was lost, damaged or destroyed, and the names of the parties, and their official position, if any, by whom the truth of the facts set out in said information can be established. The requirement of the Virginia statute was that the carrier receiving the goods should give information that the damage did not occur on its line, while the requirement of the Georgia statute is that the carrier must ascertain on what other line than its own the damage or loss occurred; and not only does it require this, but it requires the carrier to show when, where, how, and by which carrier such freight was lost, damaged or destroyed: and also requires the initial carrier to procure the names of the parties, and their official position, if any, by whom the truth of the facts set out, in reply to the shipper's notice to trace, can be established.

To comply with this statute the carrier would be compelled to send employees with every interstate shipment from the end of its own line to destination, and watch the shipment, so as to ascertain when, where, how, and by which carrier the freight was lost or damaged, and make an investigation and ascertain what employees of the carrier on whose line the freight was lost or destroyed knew of such loss or damage, and furnish the shipper with the names of each, and the official position of the witnesses, if any. For in no other way could the initial carrier procure

the information required by the statute. The record in this case shows that an honest effort was made to ascertain when, where, how, and by which carrier the grapes were damaged, but it was unable to get that information. The plaintiff in error offered to prove by its claim agent that it was utterly impossible to get up the required information within the time limit prescribed in the statute. More will be said in reference to this proffered evidence, which was rejected, in connection with another branch of this argument.

III.

The Supreme Court of Georgia cited, in support of that part of its decision in which it is held that the enforcement of the statute in question did not interfere with interstate commerce, the following authorities, in addition to the case in the 169th U. S., above referred to, to wit: Sherlock *v.* Alling, 93 U. S. 99; Smith *v.* Alabama, 124 U. S. 465; Chicago Railway Co. *v.* Solan, 169 U. S. 133; St. Joseph Railroad Co. *v.* Palmer (Neb.), 22 L. R. A. 335; Hart *v.* Railway Company, 69 Iowa, 485; Gulf Railroad Co. *v.* Crossman (Tex.), 33 S. W. 290; Williams *v.* Fears, 110 Ga. 584, affirmed in 179 U. S. 270.

Sherlock *v.* Alling, 93 U. S. 99, arose under a statute of Indiana, which provided that "when the death of one is caused by the wrongful act or omission of another, the personal representative of the former may maintain an action therefor against the latter if the former might have

maintained an action, had he lived, against the latter for an injury for the same act or omission."

Sherlock and others were engaged in carrying passengers, freight, etc., by boat from Cincinnati to Louisville, and there was a collision between two boats in the river, and one Sappington, a passenger, a citizen of Indiana, was killed. The collision which resulted in the death of Sappington was within the territorial jurisdiction of Indiana, that is, above the line of low water-mark of the river; and it was held by this court that the statute of Indiana, *supra*, did not in anywise interfere with interstate commerce, and the plaintiff in the case had the right to locate the suit in the State of Indiana. This court, after quoting from some of its decisions in which it had been held that certain State laws interfered with interstate commerce, said, p. 103:

> "In the present case no such operation can be ascribed to the statute of Indiana. That statute imposes no tax, prescribes no duty, and in no respect interferes with any regulation for the navigation and use of vessels. It only declares a general principle respecting the liability of all persons within the jurisdiction of the State for torts resulting in the death of parties injured. And in the application of the principle it makes no difference where the injury complained of occurred in the State, whether on land or on water."

In the case at bar, the statute of the State of Georgia does prescribe a duty for carriers engaged in carrying interstate commerce, and enforces that duty by imposing a "penalty" upon a carrier who fails to comply with the statute.

Smith *v.* Alabama, 124 U. S., *supra*, arose under a statute of that State which required locomotive engineers in the State to be examined and licensed by a board to be appointed for that purpose, and provided that it should be unlawful for an engineer of any railroad train in the State of Alabama to operate an engine upon the main line or road-bed of any railroad which is used for the transportation of passengers or freight, without first undergoing an examination and obtaining a license as therein provided; and prescribed a penalty to be inflicted upon any one operating an engine who failed to be examined and obtain such license. One Smith was arrested on the charge of violating the statute, and he sought to be discharged from the custody of the sheriff of Mobile county on a writ of habeas corpus, which was denied him. By writ of error the case was carried to the Supreme Court of Alabama, where the judgment below was affirmed and he prosecuted a writ of error to this court. It appeared that Smith was engaged in running an engine between Mobile, Alabama, and Corinth, Mississippi, and he claimed that the act was an interference with interstate commerce. This court affirmed the judgment of the Supreme Court of Alabama, and held that the law of Alabama in question:

> "Was an Act of legislation within the scope of the powers reserved to the States, to regulate the relative rights and duties of persons within their respective territorial jurisdictions, being intended to operate so as to secure safety of persons and property for the public; that so far as it affected transactions of commerce among the States, it did so only indirectly, incidentally and remotely, and not so as to burden or impede them."

The object of the requirement that engineers engaged

in operating locomotives should be examined and should take out a license before being permitted to operate a locomotive, was to compel railroads to procure fit and proper persons for this duty, and it was really in aid of interstate commerce, and did not burden or impede in any manner transactions of commerce between the States. But not so with the Georgia statute, as it could not be applied to an interstate shipment without placing upon the carrier engaged in interstate commerce a burden, and as we think, an onerous burden.

Chicago, Milwaukee and St. Paul Ry. Co. *v.* Solan, 169 U. S. 133, arose under a statute of the State of Iowa, which is as follows:

> "No contract, receipt, rule or regulation shall exempt any corporation engaged in transporting persons or property by railway from liability of a common carrier, or carrier of passengers, which would exist had no contract, receipt, rule or regulation been made or entered into."

One Solan accompanied a shipment of cattle from Rock Valley, Iowa, to Chicago, Ill., and while in the State of Iowa, between Boyden and Sheldon, in Iowa, it was alleged that the train was derailed by the negligence of the employees of the company. The case finally came to this court, and this court held that the statute in question affirms and extends the common law rule of liability to a carrier of persons or property, regardless of any contract that might be made between the carrier and the shipper which would have the effect to change such rule of liability; and on that ground upheld the legislation in question.

This court further said, p. 135:

> "By the law of this country, as declared by this court, in the absence of any statute controlling the subject, any contract by which a common carrier of goods or passengers undertakes to exempt himself from all responsibility for loss or damage arising from the negligence of himself or his servants is void as against public policy, as attempting to put off the essential duties resting upon every public carrier by virtue of his employment, and as tending to defeat the fundamental principles on which the law of common carriers was established—the securing of the utmost care and diligence in the performance of their important duties to the public."

In that case the shipment was from Rock Valley, Iowa, to Chicago, Ill., over the rails of the Chicago, Milwaukee & St. Paul Ry. Co., and the contract of the railway company was to deliver the shipment at Chicago, and the loss complained of was the result of the negligence of that railway company.

The case at bar does not present any such question. In the case at bar there was no negligence charged to the Central of Georgia Ry. Co., nor was there any contract or attempt to make a contract to exempt the railway company from liability from injuries or damages arising from its negligence, or the negligence of its employees; it simply contracted, as it had the right to do, to deliver to the next carrier and limit its liability for loss or damage to its own line.

St. Joseph & Grand Island R. R. Co. *v.* DeWit W. Palmer, 22 L. R. A. 335, s. c. 56, N. W. 957.

In that case a shipment was received by the St. Joseph & Grand Island R. R. Co. for transportation from Hastings, Neb., to Grant's Pass, Oregon. The railway company issued a bill of lading for carriage from Hastings, Neb., to destination. There was inserted in the bill of lading a stipulation that the initial carrier should not be liable beyond its own line. It was insisted by the shipper that there was a parol agreement in respect of the shipment, that the goods were put into the cars of the railway company, and subsequently the railway company handed to the shipper a bill of lading and requested him to sign the same in duplicate. He claimed that, relying upon the parole agreement, he signed the bill of lading without knowing that it contained a stipulation to the effect that the railway company would not be bound for damages or loss beyond its own line.

The statute of Nebraska provides that

> "No notice, either express or implied, shall be held to limit the liability of any railroad company as common carriers unless they shall make it appear that such limitation was actually brought to the knowledge of the opposite party and assented to by him, or them, in express terms before such limitation shall take effect."

The shipper in that case insisted that he did not know the stipulation was contained in the bill of lading, nor was his attention called to it. That was one of the issues submitted by the trial judge to the jury, to wit:

> "Under the laws of this State (meaning Nebraska) no limitation upon the liability of a common carrier can be imposed, except upon proof that such limitation had been called to the attention of the shipper and by him expressly assented to."

The court submitted to the jury to find whether or not the attention of the shipper had been called to the limitation of liability set out in the bill of lading, and whether the shipper's assent was obtained. The jury found that the shipper's attention had not been called to limitations contained in the bill of lading, and found for the plaintiff the value of the goods that were lost in transit.

It is true that the goods shipped were lost beyond the line of the initial carrier, and it is true that the initial carrier issued a bill of lading for the transportation of the goods over its line and other lines, naming them, but it is also true that the attention of the shipper was not called to the limitations contained in the bill of lading, and he did not expressly assent thereto. The Supreme Court of Nebraska, therefore, held that under the statute of that State the carrier was liable for the loss of the goods, though lost on the line of another railroad. The statute of Nebraska does not deny to the carrier the right to issue a bill of lading for the transportation of goods from a point on its line to destination on the line of another railway company in another State, and make a contract limiting liability to its own line, but merely prescribes how such contracts shall be made.

In Hart *v.* Railway Company, 69 Iowa 485, s. c. 29, N. W. 597, the statute of Iowa, above quoted and referred

to by this court in 169 U. S., *supra*, was passed upon by the Supreme Court of Iowa.

In that case Hart shipped a carload of horses from Des Moines, Iowa, to the town of Miller, in Dakota Territory; and when the train reached Bancroft, in the State of Iowa, the car in which the horses were caught on fire, and the horses were destroyed by the fire. The shipper made a contract with the railway company limiting its liability to a certain amount on the shipment, and there was no effort on the part of the railway company to limit liability to its own line. In point of fact, however, the damage occurred on its own line. The Supreme Court of Iowa held that the statute above referred to prevented the making of such a contract, because under the common law the carrier would be liable for the full value of the property when lost, if liable at all. It is true that the Supreme Court of Iowa held that the statute in question would be good when applied to an interstate shipment. It is very plain, however, that the court referred to the duty of the carrier under obligation either at common law, or by implied contract, to carry to destination, for that court said the statute means:

> "He is forbidden to make any contract that will exempt him from any of the liabilities which arise by implication for his undertaking to carry the property. But no burden is placed upon the property which is the subject of the contract, nor in any rule prescribed for his government respecting it."

We think the meaning of the statute which was under consideration in that case, as construed by the Supreme Court of Iowa, and by this Court in 169 U. S. *supra*, is, that where a carrier undertakes by contract to deliver on its own line, it would under the common law be liable to any injury or damage, and where the carrier impliedly con-

tracts to deliver to destination on another line, it makes such other line its agent, and it is responsible for damage to, or loss of, the thing that may occur on such line, and against such liability the carrier could not contract. But these decisions do not deny the right of a carrier to receive freight under a contract to carry to the end of its line, there deliver to the next carrier in good order, and limit liability to its own line.

In support of our construction of the Iowa statute, we call attention to a similar statute of Missouri, which was considered by the Supreme Court of Missouri, and also by this Court, in Missouri, Kansas & Texas Ry. Co. *v.* McCann, 174 U. S. 580, to wit:

> "Whenever any property is received by a common carrier to be transported from one place to another, within or without this State, or when a railroad or other transportation company issues receipts or bills of lading in this State, the common carrier, railroad or transportation company issuing such bill of lading shall be liable for any loss, damage or injury to such property, caused by its negligence or the negligence of any other common carrier, railroad or transportation company to which such property may be delivered, or over whose line such property may pass."

While the statute was in force the railway company received a shipment of cattle from Stoutsville, Missouri, the initial point on its line, to Chicago, Ill., which was beyond its line, and issued a bill of lading to transport and deliver at destination. At Hannibal, Mo., the cattle were de-

livered to the Wabash Railway, destined for Chicago. While the cattle were in the possession of the Wabash Company, near Chicago, an unreasonable delay was occasioned by the negligence of the employees of the company, resulting in damages to the cattle, for which the shippers brought an action against the initial line to recover for a breach of the contract of shipment, and obtained judgment. The case went to the Supreme Court of Missouri, and is reported in 133 Mo. 159. The case came to this court on a writ of error to the Supreme Court of the State of Missouri.

The Supreme Court of Missouri in construing the statute in question, said:

> "The provision of the statute is that 'whenever property is received by a common carrier to be transferred from one place to another.' This language does not restrict, but rather recognizes the right of the carrier to limit its contract of carriage to the end of its own route, and there deliver the property to the connecting carrier.
>
> "There can be no doubt, then, that under the statute, as well as under the English law, the carrier can, by contract, limit its duty and obligation to carriage over its own route."

This court, in passing upon the interpretation placed by the Supreme Court of Missouri on the statute in question, said:

> "Analyzing the opinion of the court, it results that the court decided that whilst the statute left a railway company ample power to restrict its liability by contract, both as to carriage and as to liability for negligence, to its own line, the purpose em-

> bodied in the statute was to regulate the form in which the contract should be expressed, so as to require the carrier to embody the limitation directly and in unambiguous terms in the portion of the agreement reciting the contract to transport, and not to import or imply such limitation by way of exception or statements of conditions and qualifications, requiring on the part of the shipper a critical comparison of clauses of the contract, in order to reach a proper understanding of its meaning. That is to say, that the restraint imposed by the statute was not a curtailment of the power to limit liability to the line of the carrier accepting freight, but a regulation of the form in which the contract having that object in view should be drawn."

Further on this subject, this court said, p. 588:

> "If the bill of lading in the case before us did not contain a positive statement of an obligation by the receiving carrier to transport from the point of shipment to the ultimate destination of the cattle, of course it would not come under the control of the statute. But as, on the contrary, the contract contains an expression of such obligation, limited by reference solely to subsequent conditions inserted in the bill of lading, it is plainly brought within the import of the statute as interpreted by the Missouri Court."

This case, we think, is decisive of the case at bar, for in the contract of carriage in this case, i. e., the bill of lading, Record p. 35, it is plainly and distinctly stated that the plaintiff in error accepted the goods, routed over sev-

eral lines from Barnesville, Ga., to Omaha, Neb., but stipulated that it agreed to carry to destination if on its road, or deliver to another carrier on the route to said destination, subject in either instance to the conditions named below in the bill of lading. Among them is condition 5, hereinbefore quoted, which plainly says that the liability of the initial and each carrier shall cease as soon as delivery is made to the next carrier; and that it would not be responsible or liable for any act, omission or negligence of the other carriers. The bill of lading, a printed form, uses the words: "agrees to carry to destination, if on its road, or deliver to another carrier on the route to said destination."

Omaha, Neb., is not "on its road," which was known to both parties, and the contract as understood by both parties thereto was to carry to the end of the line of the plaintiff in error, and there deliver to the next carrier, and liability was expressly limited to its line. Indeed, this contract of shipment was recognized by the shipper and by the Supreme Court of Georgia to be a valid and binding contract under the laws of Georgia for carriage to the end of the line of the initial carrier, and limiting liability of the initial carrier to its own line. This being true, then under the decision in 174 U. S., *supra*, this carriage could not be brought under the control of the Statute of Georgia, the enforcement of which would impair the contract right of the carrier to carry to the end of its line and there deliver to a connecting carrier, and by contract exempt itself from liability for loss or damage on another line.

GULF, COLORADO & SANTA FE R. R. CO. *v.* CROSSMAN, *et al.*

Court of Civil Appeals of Texas, 33 S. W. 290.

This case was cited by the Supreme Court of Georgia in support of its contention that a Texas statute similar to the Georgia statute in question had been held by the Court of Civil Appeals of Texas "not to encroach upon the right of Congress to control commerce among the several States."

That case arose in this wise: The railway company received two bales of cotton from Crossman & Brothers at Ladonia, Texas, to be shipped to New Orleans. The railroad company issued its bill of lading for the cotton and indicated the lines over which the cotton was to pass, and carried the cotton to a point on its line known as Honey Grove, and there delivered it to the next connecting carrier, the Texas & Pacific Railroad Company, to be transported to New Orleans. The bill of lading provided that,

> "For all loss or damage occurring in the transit or custody of said packages, the legal remedy shall be against the particular carrier only in whose custody said packages may actually be at the time of the happening thereof, it being understood that the Gulf, Colorado & Santa Fe Railroad Company, in receiving the said packages to be forwarded as aforesaid, assumed no further responsibility for their safety or safe carriage than may be shown to have occurred on their own road."

The law of Texas forbade a common carrier to make a

contract limiting its liability, and the trial court held that the initial carrier was liable for loss of the cotton which occurred after it left the rails of the initial carrier. The Civil Court of Appeals reversed the judgment of the court below and held that,

> "The shipment was an interstate shipment, and therefore not subject to regulation by the laws of the State (meaning Texas), and the defendant railway company had the right to limit its liability to damages occurring on its own line."

Williams *v.* Fears, 110 Ga. 584, arose under a statute of the State of Georgia, which provided that before any person shall engage in the business of an emigrant agent he shall register his name as such, and place of business, and pay the prescribed license tax to the proper officer; and failing to do, such person shall be guilty of a misdemeanor. One Williams was arrested for an alleged violation of these provisions of the statute of Georgia, and he applied for a writ of habeas corpus, and alleged several reasons why the Act in question was violative of the provisions of the Constitution of the United States, and also of the Constitution of the State of Georgia. The superior court, to which application for writ of habeas corpus was made, denied the writ, and by writ of error the case was carried to the Supreme Court of the State, where the judgment of the court below was affirmed. Williams, by writ of error, brought his case to this court, where it was decided and reported in 179 U. S. 270.

This court held that the levy of a license tax did not amount to such an interference with the freedom of transit or contract as to violate the Federal Constitution.

On the question of whether the statute in question affected interstate commerce, this court said:

> "These labor contracts were not in themselves the subject of traffic between the States, nor was the business of hiring laborers so immediately connected with interstate transportation or interstate traffic that it could correctly be said that those who follow it were engaged in interstate commerce, or that the tax on that occupation constituted a burden on such commerce."

In other words, it was therein held that Williams was not engaged in interstate commerce; while in the case at bar it will not be disputed that the Central of Georgia Railway Company was engaged in carrying commerce between the States.

None of the cases cited by the Supreme Court of Georgia in support of its conclusion, in our opinion, bear upon the real question in this case. The real question in this case is, whether, after the Central of Georgia Railway Company had issued a through bill of lading, obligated itself to deliver to the next carrier, and by express contract limited its liability to its own line, it can be required, at its own expense, to follow up the shipment, and ascertain when, where, how, and by whom the freight was damaged, with the names of the persons by whom the facts could be established, and their official position, if any. There is nothing in the decisions cited by the Supreme Court of Georgia which denies the right of the carrier to contract to carry to the end of its line and there deliver to a connecting carrier, and contract to limit its liability to its own

line, although it may issue a bill of lading showing the routing of the shipment from the initial point to destination, and the carriers over whose lines the shipment will move.

Those decisions hold, in construing the statutes of the States of Iowa and Missouri, first, that it is not in the power of the carrier to contract against liability for loss occurring on account of the negligence of the carrier or its agents. Second, where a carrier contracts to carry to destination over its own and connecting lines, it is liable for loss or damage to the goods wherever the same may occur.

This court, in 169 U. S., *supra*, held that a contract which exempted a common carrier from all responsibility for loss or damage arising from the negligence of himself or his servants, was, in the absence of a statute, void as against public policy. The court evidently referred to such contracts as related to loss or damage on the line of the carrier where a contract is made for delivery at destination on another line, treating the act of the carrier in that instance as making the connecting lines its agents. But this court, we apprehend, did not mean to hold that a bill of lading might not be issued by a carrier for goods passing to destination on the line of another carrier, and contract against liability for loss on the other lines. But if such is the meaning of the decision, it does not apply in this case as the statute of the State of Georgia provides that such contracts may be made.

Section 2276 of the Civil Code of Georgia of 1895 is as follows:

> "Section 2276. *Effect of notice to limit.* A common carrier can not limit his legal liability by any notice given, either by publication or by entry on

> receipts given, or tickets sold. He may make an express contract, and will then be governed thereby."

It has been repeatedly held by the courts of Georgia that this statute authorizes a carrier to issue a bill of lading from initial point to destination on the line of another carrier, and by contract limit its liability to its own line.

> Central Railroad *v.* Avant, 80 Ga. 195.
> Richmond & Danville R. R. Co. *v.* Shomo, 90 Ga. 496.

In the decision of the case at bar, the Supreme Court of Georgia say:

> "It may, however, make a contract for the transportation of goods beyond the terminus of its own line, and stipulate in such contract that its liability shall cease when the goods are delivered to the next carrier, thus making itself liable only for damages or loss occurring while the goods are in its possession."

It will thus be seen that the laws of Georgia authorize a contract limiting liability where the carrier has contracted to transport goods beyond its line. In the case at bar, the contract was not to transport to destination, but to transport to destination if it be on the line of the plaintiff in error, but if not on its line, then deliver to the next connecting carrier.

The Act of the Legislature of Georgia in question does not deny the right of the carrier to make a contract to carry to the end of its line and limit liability to its own line in

an interstate shipment, a thing it could not do, in our opinion, in reference to an interstate shipmeut, but it fully recognizes the validity of such a contract, and superadds a duty and liability utterly inconsistent with the duties and liabilities assumed by the carrier in its contract of shipment; and therefore must necessarily, when enforced, as was done in this case, take away from the carrier the right of contracting to carry an interstate shipment to the end of its line, and the right to contract for exemption from liability for a loss which may occur beyond its line, as effectually as if the Act had expressly provided that a carrier could not make such a contract.

While the Supreme Court of Georgia, in the case at bar, recognizes the right of the carrier to contract to carry an interstate shipment to the end of its line and there deliver to another carrier, and limit its liability to its own line, at the same time it reached the conclusion that such contract should not be enforced. The court, after stating that in order to secure business to be transported to distant points, it was necessary that the carrier should have traffic arrangements with connecting lines by which the shipper could be entitled to a through bill of lading securing transportation on all lines from the initial point to destination, said:

> "Especially is this true in regard to goods of a perishable nature. A carrier which holds itself out to carry such goods would secure little custom from shippers of that class of goods unless it were in a position to give reasonable assurance that the goods would not be subjected, at the terminus of the initial carrier's line, to the delays incident to shipments upon a bill of lading the undertaking of which is accomplished when the goods reach the terminus of the first carrier."

The carriers do not refuse to issue bills of lading from the initial point to destination, designating the different carriers, when necessary, but it does claim the right to refuse to contract to deliver at destination, and claims the right to contract to limit liability to its own line. The court overlooked the difference between a bill of lading under which a shipment would not move beyond the line of the initial carrier, and a bill of lading under which a shipment moves from initial point over several lines to destination, and which contains a contract limiting the liability of the initial carrier to its own line.

IV.

REQUIREMENT OF STATUTE UNREASONABLE.

If such legislation as that in question could in any event be enacted, so as to affect contracts for interstate shipments, it must be a reasonable, and not an unreasonable, requirement of carriers engaged in interstate commerce.

In our opinion, the legislation in this case is an unreasonable interference with the rights of carriers engaged in interstate commerce, and is for that reason void.

> C. C. & St. L. R. R. Co. *v.* Illinois, 176 U.S. 514; and cases therein cited.

The Supreme Court of Georgia, in discussing this view of the case, proceeded upon the idea that the railway com-

panies were compelled to issue bills of lading for through carriage to distant points in order to get any business whatever, and the court states that if the carrier should adopt a rule of issuing a bill of lading only to the end of its line, it would do little business in the transportation of goods to distant points, especially where there were other competing carriers who would issue bills of lading to points beyond their own lines. It may be true that if one carrier should refuse to issue bills of lading beyond its own line, and other carriers should issue through bills of lading, that those refusing to issue through bills of lading would not get much patronage as to shipments going beyond its own line. But it is also true that if it be held that a carrier can not issue a bill of lading from the initial point to destination, and stipulate therein to carry to the end of its line and there deliver to the next connecting carrier, and that it would not be liable for loss or damage beyond its own line, then all the carriers will, we doubt not, be forced to adopt a rule of issuing bills of lading to the end of its line; and if this is done the shipper of freights would be put to great inconvenience and trouble, and shippers of perishable freights, such as vegetables, fruits, melons, etc., will be deprived of the present privilege of getting their products into distant markets.

The court then proceeds to say that inasmuch as it is often to the interest of the carrier to issue a through bill of lading in order to secure business, and the law allows the carrier in such cases to limit liability for loss or damage while on its own line, it is not an unreasonable requirement when, under such circumstances, a loss occurs beyond its own line that the initial carrier shall, upon demand, furnish the shipper, within a reasonable time, information as to the place where the loss or damage occurred.

This view of the Court we think is erroneous for two reasons:

First, if by contract the carrier can, in respect of interstate shipments, limit liability to its own line, then surely the Legislature can not add a burden upon the carrier not provided for in the contract, by legislation which affects it either directly or indirectly.

Second. The court say it will not be an unreasonable requirement for the carrier to furnish on demand to the shipper "within a reasonable time information as to the place at which the loss or damage occurred."

Such is not the requirement of the statute; it specifically provides that the carrier shall trace the shipment, in case the freight is lost, damaged or destroyed, and "inform the applicant, in writing, when, where, how, and by which carrier said freight was lost, damaged or destroyed, and the names of the parties and their official position, if any, by whom the truth of the facts set out in said information can be established."

It will be seen that the statute requires much more at the hands of the carrier than is stated by the Supreme Court of Georgia to be reasonable in the language above set out. We by no means admit, that, if the statute required no more than the Supreme Court has stated in the language above quoted, it would be reasonable.

The Court further say:

> "Carriers, through business arrangements with the connecting carriers, are so intimately associated with each other, and each one is so thoroughly conversant with the systems of the others, that it is much easier for a carrier to obtain this informa-

tion than a shipper. In fact, it is a practical impossibility in many instances for the shipper to obtain the information himself, and a refusal or failure on the part of the initial carrier, or one of the connecting carriers, to undertake to locate the point at which the loss or damage occurred, amounts practically to a denial of redress to the shipper of goods that have been lost or damaged."

Those who are familiar with the transaction of railroad business need not be told that all the facilities which a carrier has for ascertaining the facts about the miscarriage of freights, injury of freights, loss or damage to freights, are readily and promptly exercised at the instance of one of its patrons. While it may be true that a shipper may not be able to obtain information about the loss of, or damage to, his goods, yet it is true that the shipper can make the inquiry through the carrier, and we undertake to say that no carrier would refuse to ascertain and give to the shipper all the information that could be obtained by the carrier as to the loss of or damage to his freight. By the uniform practice of railroads in this regard, shippers are enabled to get all information that the railway companies can obtain, and without charge.

The Supreme Court of Georgia say, however, that because the shipper can not by initiating an investigation of his own—although he can, as is done daily, initiate an investigation through the initial carrier—it is not unreasonable for the carrier to be required to make the investigation set out in the statute, and make a report, and on failure to give the information within a definite time, to become responsible as though the damage or loss had occurred on its line.

The court say, in support of its views on the subject:

> "The right to control by legislative enactment in the interest of the public a corporation of this character is unquestioned, and in the legislative control of the character indicated in the law now under consideration we see nothing unreasonable or arbitrary."

And the court cites the case of Richmond Railroad Co. *v.* Tobacco Co., 24 S. E., 261; s. c., 169 U. S. 311, hereinbefore referred to.

We can not see that the case cited by the Supreme Court of Georgia in anywise justifies the conclusion that said decision is authority for the contention that the Legislature may pass an Act requiring carriers, who make contracts to carry to the end of their lines and limit liability to their own line, in accordance with the laws of the State, to perform a duty in and about the carriage of interstate freight after it leaves the line of the initial carrier and passes beyond the limits of the State, and on failure to perform such requirement, within the time specified, make the carrier responsible for the loss.

In the Virginia case the provision of the statute was that,

> "If a carrier accepts for transportation freight directed to a point or destination beyond the terminus of its own line or road, it shall be deemed thereby to assume an obligation for the safe carriage to such point or destination, unless at the same time such carrier be released or exempted from such liability by a contract, in writing, signed by the owner or his agent; and although there be such contract, in writing, if such thing be lost or injured, such com-

> mon carrier shall himself be liable therefor, unless within a reasonable time after demand he shall give satisfactory proof to the consignor that the loss or injury did not occur while the thing was in his charge."

In that case the legislative provision was not unreasonable, for it only required that the carrier should give to the consignor on demand satisfactory proof that the loss or injury did not occur "while the thing was in its charge." Such is not the Georgia statute. The Georgia statute aims at loss or damage when the freight lost or damaged is not in the charge or in the care of the initial carrier. In complying with the Virginia statute a carrier could very easily give the information by calling on its employees; but in carrying out the requirements of the Georgia statute the carrier has to obtain the information from the agents and employees of other carriers, over whom it has no control whatever, and no power to coerce a statement from them.

It is demonstrated by the records in this case, we think, that the carrier could not obtain the information required by the Georgia statute by correspondence, and in order to give that information the carrier would have to send with the shipment an agent to inspect it when it passed from one carrier to another, or have persons employed at these different places to inspect it to see if it had been damaged.

If the legislative Act in terms required the carrier to have the shipment accompanied by an agent, or have agents stationed at points where the shipment changes from one carrier to another, to get up information of the kind called for by the Georgia statute, certainly no court would hesi-

tate to declare it void as an interference with interstate commerce.

The Georgia statute does not, in express terms, require this to be done, but in effect it does, because it makes a requirement which can not be met except in the manner above indicated.

The trial court rejected all the evidence defendant tendered for the purpose of showing that it had in good faith endeavored to comply with the requirements of the statute, and that it was impossible to do so. See Record, pp. 20 to 34, inclusive.

The court below rejected this evidence upon the ground that the carrier having failed to obtain the information within the time required by the statute, it could not be heard upon any question of the exercise of diligence, good faith, or the impossibility of obtaining the evidence within the prescribed time, and it was, therefore, liable to the plaintiff for the damage done to the goods, which occurred at the hands of another carrier in another State. See 5th Ground of Motion for New Trial, beginning on page 18 and ending on page 19 of Record.

Error was assigned on this ruling of the trial court, and the ruling was affirmed by the Supreme Court of Georgia. The Supreme Court of Georgia said:

> 'Of course, if an Act of the General Assembly imposes a penalty upon an individual or corporation for a failure to perform a given act within a given time, and it is manifest that the character of the act is such that the courts could take judicial notice that it could not be performed within the time required, then it would be the duty of the courts to declare such legislation invalid as an effort on the part of the lawmaking body to deprive a person of his property without due process of law."

It will be seen that the decision of the Supreme Court of Georgia is, that the carrier could not be excused for not complying with the statute in question, regardless of what evidence might be offered to show impossibility of compliance therewith, unless the character of the requirement was such that the courts could take judicial notice that it could not be performed within the time required. We think it is impossible for the court to take judicial cognizance of whether the carrier could or could not comply with the requirements of the act in question, and therefore it is a question of evidence, and we had the right to show, as we could have done, that it was impossible to get the information called for within the time limit specified in the statute.

The Supreme Court of Georgia further say:

> "In these days, when it is a matter of such common knowledge that the courts judicially know that railroad companies engaged in the transportation of persons and freight among the several States conduct their business with such facility by means of the telegraph and other agencies, that when it becomes necessary in their own interest to secure information in regard to the commonest details of the simplest transaction, they can do so in a very short space of time, a court would stultify itself that would hold as a matter of law that thirty days was not a reasonable time for a carrier whose principal office was in Georgia to secure information as to where a carload of grapes was lost or damaged which was transported from a point in this State to Omaha, Nebraska."

We do not know how the court reached the conclusion that it is "common knowledge" that a carrier can, by the

use of the telegraph and other agencies, secure information in regard to the "commonest details of the simplest transaction" in a very short space of time. We, who are so unfortunate as to represent railway companies, know that the learned court took an erroneous view of this subject. It may be that a railway company can, by a telegram, get information from another line, if it is to the interest of such line to give the information, but we know that if it is not to the interest of the other line to give the information, that it can not readily be gotten. We take the liberty of stating some things which are of common knowledge to persons who are familiar with transactions between railroad companies. We know that if a railroad company in Georgia wishes to get information from a railroad company in Illinois or Nebraska, in regard to a matter that would be to the interest of that company, the answer would be prompt. We also know that if we wish information which is not to the interest of the company of whom the inquiry is made to give, it is not given. If we wish information touching a subject which may develop liability, or the shortcoming in anywise of the railroad company applied to, it is not given promptly, and very frequently not given at all. Stacks of copies of communications, signed by railway companies making inquiries of other railway companies, about the failure to deliver freights, misrouting of freights, and the damage, loss or destruction of freight, which have not been answered, or if answered at all, answered evasively, are piled up in every railroad office in this country. It is often the case that railway companies have to resort to people disconnected with railroads, or send a special agent, to get the information necessary to support a claim against another railroad company. It is, therefore, not a matter of common knowledge that railway companies can "secure information in regard to the commonest details of the

simplest transaction in a very short space of time." But railroad people, and when we say railroad people, we mean the executive officers, the accounting departments, and the legal departments, know that information can not readily be gotten from a railroad company which will establish its shortcomings.

The testimony offered in the court below, Record pages 20 to 30, both inclusive, demonstrates the truth of our statement. Telegram after telegram was sent making inquiry about this shipment, when, where and how the same was damaged, and urging prompt answers, but the answers were of such a character as to give no definite information on the subject, and we offered to show the information, such as we had, which indicated that a certain carrier might be liable, to wit: the report of M. L. Becker, freight claim agent of the Wabash, on pages 24 and 25 of the Record. But this information was not such as to enable the plaintiff in error to determine that the liability was with the railway company which was indicated by the correspondence to have been the last that had possession of the shipment while in good order, for in the report made by Mr. Becker, he says:

> "When the freight was received by the Wabash from the L. & N., freight apparently in good order."

If the freight was in good order at that time, the damage had not up to that time occurred, although it appears from that report that the drain-pipes had been filled with cinders.

The final report of the L. & N. company was not received by the plaintiff in error until November 22d, long after the time limit in the statute had expired. Record

page 21. And the report shows (see report of Yates, yardmaster of L. & N., which was enclosed in a communication of Compton, general freight agent of the L. & N., to Mr. Graham on November 18, 1897, page 21 of Record) that "freight was in apparent good condition when delivered at St. Louis."

It was impossible, therefore, for the plaintiff in error to get the information required by the statute, to wit: when, where, how, and by which carrier the freight was damaged, and the names of the persons by whom the information conveyed could be established.

In view of the efforts of the railway company in this case to obtain the information, we are constrained to say that the learned Supreme Court of Georgia was in error in concluding that it is a matter of "common knowledge" that railroad companies can get information in regard to the commonest details of the simplest transaction in which it is interested in a very short time.

V.

DUE PROCESS OF LAW.

Our contention before the Supreme Court of Georgia, and is in this court, that the statute in question fixes a liability as enforced by the Supreme Court, upon the plaintiff in error without due process of law.

We cited in support of this contention the case of Wallace *v.* Railway Co., 94 Ga. 732. That case arose upon a statute of the State of Georgia which provided that when

any railroad company shall discharge or remove any agent or employee, it shall be the duty of such company, when requested in writing by such discharged agent or employee, to give a specific statement in writing, setting forth the reason or reasons which prompted, caused or induced such discharge or removal, and where such discharge or removal had been made on any complaint or communication made to the employer, it should be the duty of the company to inform the discharged agent or employee of the substance of such communication or complaint, and when and by whom such communication or complaint was made. It was further provided that on failure to give such statement when asked for, the employer shall be liable to the discharged agent or employee in the sum of five thousand dollars.

One Wallace was discharged by the Georgia, Carolina & Northern Ry. Co., and called upon the company for information touching his discharge. The railway company refused to give the information. Whereupon Wallace brought suit against the company for five thousand dollars. The case was carried to the Supreme Court of Georgia by Wallace, and is reported in 94 Ga. 732.

The Supreme Court decided that

> "Statements or communications, oral or written, wanted for private information, can not be coerced by mere legislative mandate at the will of one of the parties and against the will of the other. Compulsory private discovery, even from corporations, enforced, not by suit or action, but by statutory terror, is not allowable where rights are under the guardianship of due process of law."

That decision was made by a full bench, composed of three judges, neither of whom presided in the case at bar when it was before the Supreme Court of Georgia. The Supreme Court of Georgia disposed of this decision by saying that it had no application to the present case. No reason was assigned for the distinction between the case in 94 Ga., *supra,* and the case at bar. It may be true that a discharged employee, no longer connected with a railroad company, may stand upon a different footing in some respects from a shipper, i. e., the patron of a railroad company. But we think that the railway company in this case, when it had issued a bill of lading stipulating for carriage to the end of its line, and there deliver to the next connecting carrier, and by contract limited its liability to its own line, and delivered the freight to the next connecting carrier in good order, had no more legal connection thereafter with this shipment than did the railway company have with Wallace after it had discharged him.

The principle decided by the Supreme Court of Georgia in 94 Ga., *supra,* we think is pertinent to the question in hand, and a clear enunciation of a sound legal principle is found in the following language:

> "Statements or communications, oral or written, wanted for private information, can not be coerced by mere legislative mandate at the will of one of the parties and against the will of the other."

The statute in question provides for obtaining private information for the benefit of one whose goods have been lost or damaged, that he may use the same against another carrier, and it attempts to coerce such information by a legislative mandate which makes the initial carrier liable in case it fails to secure such information.

The court, in 94 Ga., *supra*, said:

> "Compulsory private discovery, even from corporations, enforced, not by suit or action, but by statutory terror, is not allowable where rights are under the guardianship of due process of law."

This principle, we say, is applicable to the question under consideration in the case at bar. The information asked for was private, i. e., private discovery. It was not enforced by suit or action to compel the plaintiff in error to discover under oath all the information it had touching the subject in hand, but it attempted to force plaintiff in error to discover information of others by statutory terror, i. e., make the plaintiff in error—the initial carrier—liable in case it failed to give the information called for. When the plaintiff in error delivered the shipment in this case to the next connecting carrier, which was done and not disputed, it discharged every duty it owed the shipper, and it was in no sense liable for the fate of the shipment after it left the rails of the plaintiff in error.

The plaintiff in error was under no contract obligation to respond to the shipper for any loss or damage the shipment might sustain on the line of other railway companies, and a statute under which the plaintiff in error can be made liable for such a loss effectually compels the plaintiff in error to pay the obligations and liabilities of another carrier, and is a denial of due process of law.

> "An Act of the Legislature which arbitrarily made one person liable for the debts, or responsible for the acts of another, would deprive him of due process of law."

Camp *v.* Rogers, 44 Conn. 291.

Colon *et al. v.* Lisk *et al.* (N. Y. Ct. Apps.), 47 N. E. 302.

People *v.* O'Brien *et al.* (N. Y. Ct. Apps.), 18 N. E. 692.

Towle ~~& Roper~~ *v.* H. Mann (Sup. Ct. Iowa), ~~& N. W. 814~~ 53 Iowa, 42.

The case of Ohio Railroad Co. *v.* Lackey, 78 Ill. 55, arose under a statute which required railroad companies to pay the cost of the inquest and the cost of the burial of persons who should die on their cars. The Supreme Court of Illinois decided this statute to be unconstitutional and void as denying to the railroad company due process of law; that it was an arbitrary requirement that the railway company should pay the expenses of the burial of persons who died on its cars without any fault or negligence on the part of the railroad company; that it made the railroad company responsible for the obligations of others. The principle and reasoning in that case, we think, is applicable to the case at bar.

BEILENBERG *v.* RAILWAY COMPANY, 20 PAC. REP., 314.

This case arose under a statute of Montana which provided that a railroad company when it had damaged or killed a horse should be liable therefor without reference to whether the corporation or its servants or agents were negligent in the act complained of. The court held that the Act was void in so far as it attempted to make a rail-

way company, not guilty of negligence, liable for the killing of an animal.

We are unable to distinguish the principle contained in the two above cases from the case at bar. In the case at bar, the grapes that were damaged were shipped from Barnesville, Ga., to Omaha, Neb., and delivered to the next connecting carrier in good order, as the record shows the plaintiff in error offered to prove—and shipped upon a contract which limited the liability of the plaintiff to injuries to the grapes on its own line; and it was not in any sense negligent in connection with the damage to the grapes.

The suit in this case is based upon the failure of the carrier to trace the grapes and give information as provided by the statute, which only applies to shipments where "under the contract of shipment, or by law, the responsibility of each or either shall cease upon delivery to the next in good order," and is an acknowledgment that the plaintiff in error delivered the goods to the next connecting carrier in good order, and was not liable under its contract, or by law, for the delivery of the goods at destination. And in so proceeding the shipper, i. e., the defendant in error, acknowledged that the plaintiff in error was not under the contract of shipment, or by law, responsible except to the end of its line, and that it delivered the goods to the next connecting carrier in good order. Notwithstanding this is true, yet the plaintiff in error sought to show that it had acted in the utmost good faith in the matter, and had handled the shipment promptly, and had delivered it to the next carrier in good order. See testimony of J. C. Nowell, J. W. McDade, J. E. Mattox and J. W. Varnon, offered by the plaintiff in error, and rejected by the court. (Record pp. 28, 29 and 30.) This testimony will show

that there was no delay in the shipment over the rails of the plaintiff in error, and that the car-load of grapes was promptly delivered to the next connecting carrier in good order, and that the car-load of grapes was received in like good order by the W. & A. Railroad, operated by the N. C. & St. L. Ry., and delivered to the Nashville Division of the N. C. & St. L. at Chattanooga, Tenn., in like good order.

The defendant offered to show by the testimony of J. L. Graham, its claim agent, see 6th Ground of Motion for New Trial, Record p. 27, that

> "He had charge of the tracing of the freight in controversy; that he instituted search for the information asked for by the plaintiff in the court below; that he proceeded vigorously by letters and telegrams, and urged the lines to furnish it in thirty days, and it was utterly impossible to obtain the information within thirty days, but it was tendered as soon as obtained."

Here we have the sworn statement of the claim agent of the Central of Georgia Railway Company, in opposition to the decisions of the Supreme Court of Georgia, that it is "common knowledge" that railway companies could get "the commonest details of the simplest transactions" from other railway companies in reference to its own matters, and could as easily do so when asking information for the benefit of the shipper. This evidence establishes the fact that it was impossible to get the information asked; and notwithstanding this evidence, it was held by the trial court, whose judgment was affirmed by the Supreme Court of

Georgia, that the defendant could not be heard to make such defense, and the court adjudged the plaintiff in error liable for the amount of the damage done to the shipment in question, i. e., so enforced the statute as to make the plaintiff in error liable for damages resulting from the negligence of another carrier, over whose conduct it had no control, and for whose acts it was not responsible under the terms of the contract of shipment, or the law of the State of Georgia.

VI.

THE STATUTE DOES NOT PERMIT ANY DEFENSE.

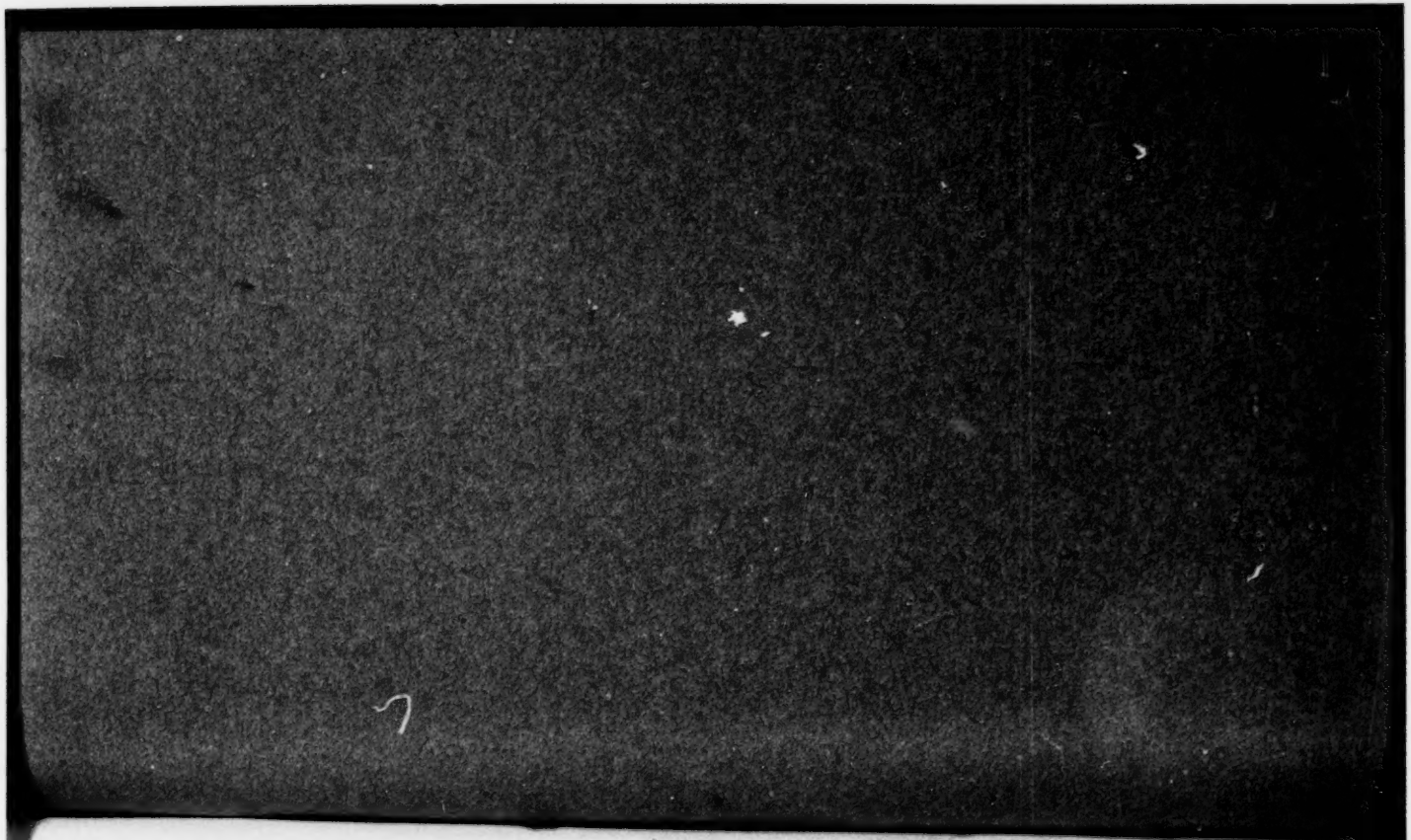
The statute in question does not permit the carrier to make any defense. It provides that a carrier failing to trace freights as required shall, as a "penalty" for failing to trace, be liable in the same manner and to the same extent as if the loss or damage to the freight had occurred on its line. The Act itself, Code, section 2318, hereinbefore quoted, denominates this imposed liability a "*penalty*" for failing to trace as required by the statute, and the Supreme Court of Georgia in this case referred to this statute as imposing a "*penalty*" upon the initial carrier for failure to give the information sought. See near top of page 44 of Record.

It is true that the statute provides that the initial carrier shall become liable for the freight damaged or lost in the same manner and to the same extent as if the damage or

loss occurred on its line. But when we consider what defense could be made by a carrier who had damaged, destroyed or lost freight, it will be seen that the statute leaves the initial carrier failing to trace freight no defense, for a carrier can only defend under the laws of the State of Georgia against liability where the freight is lost, damaged or destroyed on its line by setting up that the loss or damage occurred "by the act of God or the public enemies of the State." Code of Georgia, 1895, section 2264. The carrier is left no defense by way of setting up his own conduct or exemption from liability, but is made to assume the liability of the carrier in whose hands the goods were when lost, damaged or destroyed, the same as if such loss or damage had occurred on its line. Nor could the initial carrier, who is proceeded against for failing to comply with the provisions of section 2317 of the Code, *supra*, set up any defense that the carrier [redacted] who damaged the goods might have demanded the goods under the law of the State in which the damage occurred, but must answer for damages which were occasioned by another carrier in another State, according to the rule of liability prescribed in section 2264 of the Code of Georgia, *supra*.

Respectfully submitted,

HENRY C. CUNNINGHAM,
JOHN I. HALL,
LLOYD CLEVELAND,
ROBT. L. BERNER,
For Plaintiff in Error.



IN THE SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1904.

The Central of Georgia Railway Company, Plaintiff in Error, VERSUS A. O. Murphey & Hunt, Defendants in Error.	In Error to the Supreme Court of the State of Georgia.

BRIEF FOR DEFENDANT IN ERROR.

1. This case has been before the Supreme Court of Georgia twice, and in both instances the decision of this Court was favorable to the Defendants in Error. The case is first reported in 113th Ga., page 514; and after a second trial reached the Supreme Court again, and is found reported in 116th Ga., page 863. This last decision is now up for review by the Supreme Court of the United States.

2. Doubts are always resolved in favor of the constitutionality of the Statute. The violation must be clear and palpable in order for the statute to be held unconstitutional.

Cooley's Constitutional Limitations (6th ed.), pages 216 to 220, and cases cited.
Ogden vs. Saunders, 12 Wheat. 213 and 270.
Munn vs. Illinois, 94 U. S. 113 and 125.
Cooper vs. Telfair, 4 Dall. 14 and 19.
Plumley vs. Massachusetts, 155 U. S. 461 and 479.
Carey et al. vs. Giles, 9 Ga. 253 and 258 (4 and 5).

3. Under the facts in this case, the shipment of grapes was damaged by the negligence of one of the carriers which handled the shipment.

Original record in this case, pp. 43, 44, 45, 46, 47 and 48.
Printed record in this case, pp. 31, 32, 33 and 34.
Central etc. Ry. Co. vs. Murphey & Hunt, 113 Ga. 514 and 520 (2).

(a) Such being the case, and the initial carrier having failed to trace the freight and give to the shipper the required information, under the terms of the Statute under review, it became "liable for the value of the freight lost, damaged or destroyed in the same manner, and to the same extent as if said loss, damage, or destruction occurred on its own line." The law under the facts in this case imputes the negligence to the Defendant Company, and makes the same, in effect, its negligence.

Code of Ga. of 1895, Section 2318.
Central etc. Ry. Co. vs. Murphey & Hunt, 113 Ga. 514 and 520 (2).

4. The Statute in question merely sets up a rule of evidence, and establishes a legal presumption to be deduced from the failure of the carrier to trace the freight and give the required information. This the State Legislature may do without violating the Federal Constitution.

Central etc. Ry. Co. vs. A. O. Murphey et al., 116 Ga. 863. (The decision under review here.)
Jones vs. Brim, 165 U. S. 180.

5. The Statute in question is really the converse of the last part of Section 2298 of the Code of Georgia of 1895. Said Section being as follows: "Where there are several connecting railroads under different companies and the goods are intended to be transported over more than one railroad, each company shall be responsible only to its own terminus, and until delivery to the connecting road; the last company which has received the goods 'as in good order' shall be responsible to the consignee for any damage open or concealed, done to the goods, and such companies shall settle among themselves the question of ultimate liability." This last recited Statute has been held not to violate the Commerce clause of the Federal Constitution, or to be an attempt to regulate interstate commerce, but merely to create a legal presumption.

Kavanaugh & Co. vs. So. Ry. Co., 120 Ga. 62 and 64.

(a) Both these Statutes are remedial in their nature; they do not affect the shipment or the process of transportation. They recognize the helpless disadvantage under which the shipper is

placed in locating the cause of the damage to his goods, and relieve him of the difficult and impossible task of locating the blame and the cause of the loss, and place this duty upon the carrier who has all the facilities and means at hand for tracing the shipment.

Original record, pages 60, 61, 62 and 63.
Printed record, pages 42, 43 and 44.
(Decision in this case in the Court below, 116 Ga. 863.)

6. The Statute under consideration was in force at the time the contract of shipment was made in this case, and therefore was a part of the contract and of the consideration thereof.

7. The Court below in this case held as matter of fact that the railroad company could have traced the freight and given the required information within the time provided; and this is borne out by the record.

Original record, pages 65 and 66.
Printed record, page 46.

(a) The Statute in question came up before the Supreme Court of Georgia again in the case of the Southern Ry. Co. vs. Ragsdale, et al., in 119 Ga. 773, and the ruling made in the case at bar was adhered to. A strong intimation was given by the Court in this last case to the effect that if the railroad company should prove that it was impossible for it to trace the freight and give the required information within the time provided, such would be a defense to the action. In the case at bar, however, the Court held affirmatively that the facts offered in evidence by the Defendant were not sufficient to make out such a defense.

8. A railroad company is not compelled to make a contract to forward goods beyond its own line.

Coles vs. Railroad Co., 86 Ga. 251.
A. T. etc. R. R. Co. vs. R. R. Co., 110 U. S. 668 and 680 (bottom page).

(a) But when it receives goods consigned to a point beyond its own line, it undertakes to transport them to their destination, and if the goods are lost or damaged, it will be liable therefor, in the absence of a contract otherwise limiting its liabilty.

Falvey vs. R. R. Co., 76 Ga. 597.
Hutchinson on carriers (2nd ed.), sections 145 to 152 inc.

(b) However, it may by express contract, limit its liability to its own line.

Central Ry. Co. vs. Avant, 80 Ga. 195.
R. & D. R. R. Co. vs. Shomo, 90 Ga. 500 (top page).

(c) Such being the state of the law in Georgia, and the shipper not being able to hold the carrier with which he dealt liable, on account of the limitations which were put in the contracts of shipment in pursuance of the decisions cited under Section (b) above, and the shipper not being able to discover how or where his goods were damaged, and being thus entirely helpless in the premises—all the avenues of information being closed to him—the Legislature of Georgia came to his relief and gave him a remedy by enacting the Statute under consideration.

(d) The contract under which the goods were shipped in this case was made in Georgia, and is governed by the laws of that State.

Liverpool etc. Co. vs. Ins. Co., 129 U. S. 397.

9. The Defendant Railroad Company "being affected with a public interest," and being a Georgia corporation, and being clothed with special privileges, is therefore subject to legislative control in the interest of the public.

Munn vs. Illinois, 94 U. S. 113.
Ga. R. R. Co. vs. Smith, 128 U. S. 174.
Chicago etc. Ry. Co. vs. Pullman Car Co., 139 U. S. 79 and 90.
Smyth vs. Ames, 169 U. S. 466 and 544.

10. The Statute under consideration does not violate the Commerce clause of the Federal Constitution, nor does it attempt to regulate interstate commerce. States may, in the exercise of their reserved powers, enact laws which, though they incidentally relate to and affect commerce between the States, yet are not to be considered as regulations of that commerce within the meaning of the Constitution of the United States.

Sherlock vs. Alling, 93 U. S. 99 and 103.
Peik et al. vs. Chicago, etc., Ry. Co. et al., 94 U. S. 164.
Bagg vs. Wilmington etc. Ry. Co., 109 N. C. 279, and cases cited.
Kidd vs. Pearson, 128 U. S. 1 and 16.
Fry vs. State, 63 Ind. 552.
Williams vs. Fears, 179 U. S. 270 (affirming 110 Ga. 584).
Smith vs. Alabama, 124 U. S. 465.
Nashville etc. Ry. Co. vs. Alabama, 129 U. S. 96 and 100.
Missouri etc. Ry. Co. vs. Haber, 169 U. S. 613 and 626.
New York etc. R. R. Co. vs. New York, 165 U. S. 628, 631 and 632.
Chicago etc. Ry. Co. vs. Solan, 169 U. S. 133 and 137.
Richmond etc. R. R. Co. vs. Patterson Tobacco Co., 169 U. S. 311.
(Affirming 24 S. E. Rep. 261 (Va.).)
St. Joseph etc. R. R. Co. vs. Palmer, (Neb.), 22 L. R. A. 335.
Hart vs. Ry. Co., 69 Ia. 485, and cases cited.
McCann vs. Eddy, 133 Mo. 59.
Missouri etc. Ry. Co. vs. McCann, 174 U. S. 580.

11. The Statute in question comports with sound public policy and with responsibility placed upon carriers by the common law and the statutes and decisions of the various States and of the United States. The shipper and the carrier are on an unequal footing, and the carrier is therefore held to rigid responsibility.

Code of Georgia of 1895, Section 2264.
Central Ry. Co. vs. Hasselkus et al., 91 Ga. 382 (2 and 3).
Penn. R. R. Co. vs. Hughes, 191 U. S. 477 and 489.
Balti. & Ohio R. R. Co. vs. Voigt, 176 U. S. 498, 505 and 507.
New York etc. R. R. Co. vs Lockwood, 17 Wall. 357.
Bank of Ky. vs. Adams Ex. Co., 93 U. S. 174.
Ry. Co. vs. Stevens, 95 U. S. 655.
Missouri etc. R. R. Co. vs. McCann (subra), 174 U. S. 580.
Brockway vs. Express Co., 178 Mass. 257.
Ohio etc. Ry. Co. vs. Tabor, 98 Ky. 503.

Chicago etc. Ry. Co. vs. Solan (supra), 169 U. S. 133.
Central Ry. Co. vs. Lippman, 110 Ga. 665.

(a) In McCann vs. Eddy, 133 Mo. 59, the Court in construing the statute there involved said, "It imposes no burden or restraint, but does that which every State has a right to do, namely, to provide and regulate the remedy when a cause of acion arises."

(b) In construing the Statute of Virginia, somewhat similar to the one in question, this Court said: "The concluding sentence of the Statute imposing upon the carrier a duty, where the loss has not happened on the carrier's own line, to inform the shipped of this fact, is but a regulation manifestly within the power of the State to adopt."

R. & A. R. R. Co. vs. Tobacco Co., 169 U. S. 311 and 316 (top page).

12. The United States Supreme Court will generally adopt the construction placed upon a statute of a State by the court of last resort of such State.

Sioux City Trust Co. vs. Trust Co., 172 U. S. 642.
Postal Tel.-Cable Co. vs. Adams, 155 U. S. 688.
Geer vs. Conn., 161 U. S. 519.
Railroad tax cases, 92 U. S. 575.

13. The Statute under consideration facilitates the safe transportation of goods, and is therefore constitutional. As the U. S. Supreme Court stated in the case of Chicago etc. Ry. Co. vs. Solan, in 169 Ga. 133, "A statute is in no just sense a regulation of commerce which does not undertake to impose any tax upon the company or to restrict the persons or things to be carried or to regulate the rate of tolls, fares or frieght. A State may enact a statute, the object and effect of which are to make it more sure that railroad companies shall perform the duty resting upon them by virtue of their employment as public carriers, to use the utmost care and diligence in the transportation of passengers and goods. * * * They (such laws) are not in themselves regulations of interstate commerce, although they control in some degree the conduct and liability of those engaged in such commerce. So long as Congress has not legislated upon

the particular subject, they are rather to be regarded as legislation in aid of such commerce, and as a rightful exercise of the police power of the State to regulate the relative rights and duties of all persons and corporations within its limit."

(a) As stated by this Court in the case of Missouri etc. Ry. Co. vs. Haber, in 169 U. S. 613 and 635, "These cases all proceed upon the ground that the regulation of the enjoyment of the relative rights and performance of the duties of all persons within the jurisdiction of a State, belong primarily to such State under its reserved power to provide for the safety of all persons and property within its limits."

(b) In the case of The Lake Shore etc. Ry. Co. vs. Ohio, in 173 U. S. 299 (top page), this Court said: "These Statutes are all sustained upon the ground that they were not directed against nor were direct burdens upon interstate or foreign commerce, and having been enacted only to protect the public safety, the public health or the public morals, and having a real substantial relation to the public ends to be accomplished, were not to be deemed absolutely forbidden because of the mere grant of power to Congress to regulate interstate and foreign commerce, but are to be regarded as only incidentally affecting such commerce, and valid until superseded by legislation by Congress on the subject."

The Court in this case quoted with approval the language of Chief Justice Shaw, in 7 Cush. 53 and 85, that the States have power "to make and establish all manner of wholesome and reasonable laws, statutes and ordinances, either with penalties or without, not repugnant to the Constitution, as they shall judge to be for the good and welfare of the commonwealth, and of the subject of the same."

The Court also in this case quoted with approval the following language from Cooley's Constitutional Limitations (6th ed.) page 715, to-wit: "It cannot be doubted that there is ample power in the legislative department of the State to adopt all necessary legislation for the purpose of enforcing the obligations of railroad companies as carriers of persons and goods, to accommodate the public impartially and to make every provision for carrying with safety and expedition."

The Court in this case further said: "Outside of the field directly occupied by the general government under the powers granted to it by the Constitution, all questions arising within a state that relate to its internal order or that involve the public convenience or the general good, are primarily for the determination of the State, and that its legislative enactments relating to those subjects and which are not inconsistent with the State constitution, are to be respected and enforced in the courts of the Union, if they do not by their operation directly entrench upon the authority of the United States or violate some right protected by the National Constitution. * * * It may be that such legislation is not within the police power of the State, as those words have been sometimes, though inaccurately used. But in our opinion the power, whether called public, governmental or legislative, exists in each state by appropriate enactments not forbidden by its own constitution or by the Constitution of the United States, to regulate the relative rights and duties of all persons within its jurisdiction and therefore to provide for the public convenience and the public good."

Lake Shore etc. Ry. Co. vs. Ohio, 173 U. S. 285 and 297.

This language fits the statute in question.

14. The other contention of the Plaintiff in Error that the Statute in question deprives it of its property without due process of law, is not well taken. The Railroad Company was duly served with notice and process and has had its day in Court.

Chicago etc. Ry. Co. vs. Zernicke, 183 U. S. 582 and 587.
Missouri Ry. Co. vs. Mackey, 127 U. S. 205.
Minneapolis etc. Ry. Co. vs. Herrick, 127 U. S. 210.
Missouri Pac. Ry. Co. vs. Humes, 115 U. S. 512.
Walker vs. Sauvinet, 92 U. S. 90.
St. Louis etc. Ry. Co. vs. Mathews, 165 U. S. 1.
Jones vs. Brim, (supra), 165 U. S. 180.

Respectfully submitted,
HOKE SMITH,
W. W. LAMBDIN,
Attorneys for A. O. Murphey & Hunt, Defendants in Error.

Supreme Court of the United States.

No. 111.—October Term, 1904.

The Central of Georgia Railway Company, Plaintiff in Error, vs. A. O. Murphey and J. L. Hunt, Partners, doing business as A. O. Murphey & Hunt.	In error to the Supreme Court of the State of Georgia.

[January 9, 1905.]

The plaintiff in error brings this case here to review the judgment of the Supreme Court of Georgia, affirming a judgment of the trial court, in favor of the defendants in error, for the damages sustained by them on the shipment of certain grapes, as hereinafter more particularly stated. (First reported, 113 Ga. 514, and again on appeal from judgment on second trial, 116 Ga. 863.)

The trial court gave judgment for the shippers of the grapes, who were plaintiffs below, for the amount of the difference between the market price of the grapes as shipped in good order and the amount they actually received for the same in their damaged condition, being the sum of $434.55. The action was commenced in the Pike County Court, in the State of Georgia, and the petition averred that on July 31, 1897, the petitioner shipped a carload of grapes from Barnesville, Georgia, consigned to Rocco Brothers, Omaha, Nebraska, by way of the Central of Georgia Railway Company. The freight was to be conveyed by more than two common carriers, the initial carrier being the Central of Georgia Railway Company, and the freight was shipped under a contract of shipment in which it was provided that the responsibility of each carrier should cease upon delivery to the next "in good order." The grapes were greatly damaged on the route between Barnesville and Omaha, and the damage resulted from the negligence of the common carriers on the route. The petitioners applied to the plaintiff in error, the initial carrier on the route, and served it with an application in writing August 20, 1897, in which they requested that the railway company should trace the freight and inform the petitioners, in writing, when, how and by which carrier the freight was damaged, and also that the company should furnish the petitioners the names of the parties and their official position, if any, by whom the truth of the facts set forth in the information could be established. The railroad company failed to trace the freight and give the information in writing within the thirty days required by law, wherefore the petitioners averred that the railroad company became indebted to the petitioners to the amount of the damage to the grapes as stated.

The plaintiff in error demurred to the petition, the demurrer was overruled, and it then put in an answer denying many of the allegations of the petition. Upon the trial it appeared that the grapes were shipped from Barnesville, Georgia, to Omaha, Nebraska, and they were "routed" by the shippers over the Central of Georgia, then the Western and Atlantic, then the Nashville, Chattanooga and St. Louis, then the Louisville and Nashville, and then the Wabash Railroads. The initial carrier, the plaintiff in error, issued to the shippers, A. O. Murphey and Hunt, a bill of lading for the carload of grapes, which showed the routing as above stated, and the bill was signed by Murphy and Hunt, as the contract between the plaintiff in error and themselves. It contained a promise "to carry (the grapes) to said destination, if on its road, or to deliver to another carrier on the route to said destination, subject in either instance to the conditions named below, which are agreed to in consideration of the rate named." Omaha, Nebraska, is not on the road of the plaintiff in error. Paragraph 5 of the bill of lading, under which the shipment of grapes was made, reads as follows:

"5. That the responsibility, either as common carrier or warehouseman, of each carrier over whose line the property shipped hereunder shall be transported, shall cease as soon as delivery is made to the next carrier or to the consignee; and the liability of the said lines contracted with is several and not joint; neither of the said carriers shall be responsible or liable for any act, omission or negligence of the other carriers over whose lines said property is or is to be transported."

The grapes were carried under the contract contained in the bill of lading, and arrived at Omaha, in the State of Nebraska, in a damaged condition.

The law under which the action was brought is found in sections 2317 and 2318 of the Code of Georgia of 1895. Those sections are set forth in full in the margin.*

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*SEC. 2317. When any freight that has been shipped, to be conveyed by two or more common carriers to its destination, where, under the contract of shipment or by law, the responsibility of each or either shall cease upon the delivery to the next "in good order," has been lost, damaged or destroyed, it shall be the duty of the initial or any connecting carrier, upon application by the shipper, consignee or their assigns, within thirty days after application, to trace said freight and inform said applicant, in writing, when, where, how and by which carrier said freight was lost, damaged, or destroyed, and the names of the parties and their official position, if any, by whom the truth of the facts set out in said information can be established.

SEC. 2318. If the carrier to which application is made shall fail to trace said freight and give said information, in writing, within the time prescribed, then said carrier shall be liable for the value of the freight lost, damaged or destroyed, in the same manner and to the same amount as if said loss, damage or destruction occurred on its line.

On the 20th day of August, 1897, the shippers availed themselves of these provisions of the statute, and duly demanded of the plaintiff in error that it should trace the grapes and inform the shippers, in writing, when, how and by which carrier the grapes were damaged, and the names of the parties and their official position, if any, by whom the truth of the facts set out in the information could be established. They also demanded that the information should be furnished within thirty days from the date of the application. The plaintiff in error, although it endeavored so to do, failed to furnish the information within the time mentioned in the statute. It offered to prove on the trial that the car in which the grapes were originally shipped at Barnesville, on the road of the plaintiff in error, reached Atlanta, Georgia, the end of the line of the plaintiff in error, in due time, and that the grapes were then in good order, and the car was promptly delivered to the next connecting line, that is, the Western and Atlantic railroad, and by that road it was delivered to the Nashville, Chattanooga and St. Louis Railroad Company, at Nashville, Tennessee, with the grapes in like good order and condition. The evidence was rejected, the court holding that the plaintiff in error had failed to comply with the conditions of the statute, and that it was therefore liable for the amount of the damage sustained by the petitioners on whatsoever road the damage actually occurred.

Mr. Justice PECKHAM, after making the foregoing statement of facts, delivered the opinion of the Court.

The Supreme Court of Georgia has held in this case that the statute applies to shipments of freight destined to points outside, as well as to those inside the State, and we must accept that construction of the State statute. The question for us to decide is whether the statute, when applied to an interstate shipment of freight, is an interference with or a regulation of interstate commerce, and therefore void.

We think the imposition upon the initial or any connecting carrier, of the duty of tracing the freight and informing the shipper, in writing, when, where, how and by which carrier the freight was lost, damaged or destroyed, and of giving the names of the parties and their official position, if any, by whom the truth of the facts set out in the information can be established, is, when applied to interstate commerce, a violation of the commerce clause of the Federal Constitution. The Supreme Court of Georgia has held that a carrier has in that State the right to make a contract with the shipper, to limit its liability as a carrier, to damage or loss occurring on its own line. (*Central Railway Co.* v. *Avant*, 80 Ga. 195; *Richmond &c. Co.* v. *Shomo*, 90 Ga. 500.)

Whether the State would have the right to prohibit such a contract with regard to interstate commerce need not therefore be considered. It

has not done so, but on the contrary its highest court has recognized the validity of such a contract. Without the provisions of the statute in question, the plaintiff in error would not be liable to the shippers in this case, if, without negligence, they delivered the consignment in good condition to the succeeding carrier. This they offered to prove was the case. But if this statute be valid, this limitation of liability can only be availed of by the railroad company by complying with its provisions. In other words, before it can avail itself of the exemption from liability beyond its own line, provided for by its valid contract, the initial or any connecting carrier must comply with the terms of the statute, and must within thirty days after notification obtain and give to the shipper the information provided for therein. This is certainly a direct burden upon interstate commerce, for it affects most vitally the law in relation to that commerce, and prevents the exemption provided by a legal contract between the parties from taking effect, except upon terms which we hold to be a regulation of interstate commerce. It is said that the reason for the passage of such an act lies in the fact that, as a general rule, shippers under such a contract as the one in question are very much inconvenienced in obtaining evidence of the loss or damage, where it occurred on another road than that of the initial carrier. It is contended that under such contracts, there being great difficulty in identifying the particular carrier upon whose road the loss occurred, it is reasonable to make the initial or other connecting carrier liable therefor, unless such carrier furnish the information provided for in the statute.

We can readily see that a provision, such as is contained in the statute in question, would be a very convenient one to shippers of freight through different States. And a provision making the initial or any connecting carrier liable in any event for any loss or damage sustained by the shipper, on account of the negligence of any one of the connecting lines, would also be convenient for the shippers; but it would hardly be maintained, when applied to the interstate shipment of freight, that a State statute to that effect would not violate the commerce clause of the Federal Constitution. The provision of this statute, while not quite so onerous, is yet a very plain burden upon interstate commerce. It is also said that it is so much easier for the initial or other connecting carrier to obtain the information provided for in the statute than it is for the shipper, that a statute requiring such information to be obtained under the penalty of such carrier being liable for the damage sustained, ought to be upheld for that very reason.

Assuming the fact that the carrier might more readily obtain the information than the shipper, we do not think it is material upon the question under consideration. We are not, however, at all clear in regard to the fact. The loss or damage might occur on the line of a connecting carrier, outside the State where the shipment was made, (as was the case here,) and we do not perceive that the initial carrier has any means of obtaining the in-

formation desired, not open to the shipper. The railroad company, receiving the freight from the shipper, has no means of compelling the servants of any connecting carrier to answer any question in regard to the shipment or to acknowledge its receipt by such carrier, or to state its condition when received. And when it is known by the servants of the connecting company that the object of such questions is to place in the hands of the shipper information upon which its liability for the loss or damage to the freight is to be based, it would seem plain that the information would not be very readily given, and the initial or other carrier could not compel it. The effect of such a statute is direct and immediate upon interstate commerce. It directly affects the liability of the carrier of freight destined to points outside the State, with regard to the transportation of articles of commerce; it prevents a valid contract of exemption from taking effect except upon a very onerous condition, and it is not of that class of State legislation which has been held to be rather an aid to than a burden upon such commerce. The statute in question prevents the carrier from availing itself of a valid contract unless such carrier comply with the provisions of the statute by obtaining information which it has no means of compelling another carrier to give, and yet if the information is not obtained the carrier is to be held liable for the negligence of another carrier over whose conduct it has no control. This is not a reasonable regulation in aid of interstate commerce, but a direct and immediate burden upon it.

The case of *Richmond &c. Company* v. *Tobacco Company*, (169 U. S. 311,) is not an authority against these views, but, on the contrary, it supports and exemplifies them. The section of the Virginia Code, 1295 of 1887, was held not to be a regulation of interstate commerce, because it simply established a rule of evidence ordaining the character of proof by which a carrier might show that, although it received goods for transportation beyond its own line, nevertheless, by agreement, its liability was limited to its own line. The statute left the carrier free to make any limitation as to its liability on an interstate shipment, beyond its own line, as it might deem proper, provided only the evidence of the contract was in writing and signed by the shipper. The provision of the Virginia statute that, although the contract in writing provided for therein was made in fact, yet "if such thing be lost or injured such common carrier shall himself be liable therefor, unless, within a reasonable time after demand made, he shall give satisfactory proof to the consignor that the loss or injury did not occur while the thing was in his charge," is a materially different provision from the one under consideration. A provision in a statute may be deemed a reasonable one, and not a regulation of interstate commerce, where the statute simply imposes a duty upon the carrier, when the loss has not happened on the carrier's own line, to inform the shipper of that fact within a reasonable time, and this court has said in the above case

that such a provision is manifestly within the power of the State to adopt. This is very different from the duty imposed upon the carrier by the statute in question here, which is much more onerous, and imposes a liability, unless the detailed information provided for in the statute is obtained and given to the shipper.

The case of *Chicago &c. Railway Company* v. *Solan*, (169 U. S. 133,) holds the same general principle as that involved in the case just cited. To the same effect are the cases referred to in the opinion of Mr. Justice Gray in the Solan case. It is idle to attempt to comment upon the various cases decided by this court relating to this clause of the Federal Constitution. We are familiar with them, and we are certain that our decision in this case does not run counter to the principles decided in any of those cases. The statute here considered we think plainly imposes a burden upon the carrier of interstate commerce and is not an aid to it, but in its direct and immediate effect it is quite the contrary.

The power to regulate the relative rights and duties of all persons and corporations within the limits of the State cannot extend so far as to thereby regulate interstate commerce. The police power of the State does not give it the right to violate any provision of the Federal Constitution. Being of the opinion that the statute in question when applied to an interstate shipment is a regulation of interstate commerce, we must hold the statute, so far as it affects such shipments, to be void on that account. The judgment of the Supreme Court of Georgia is reversed and the case remanded for such further proceedings as may be consistent with this opinion.

Reversed.

True copy.

Test:

Clerk Supreme Court, U. S.